



# Senate

General Assembly

**File No. 541**

February Session, 2022

Senate Bill No. 385

*Senate, April 20, 2022*

The Committee on Finance, Revenue and Bonding reported through SEN. FONFARA of the 1st Dist., Chairperson of the Committee on the part of the Senate, that the bill ought to pass.

## ***AN ACT CONCERNING THE AMOUNT OF THE DIGITAL MEDIA TAX CREDIT.***

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

1 Section 1. Section 12-217jj of the 2022 supplement to the general  
2 statutes is repealed and the following is substituted in lieu thereof  
3 (*Effective from passage*):

4 (a) As used in this section:

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

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

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

13 relocated television production; interactive games; videogames;  
14 commercials; any format of digital media, including an interactive web  
15 site, created for distribution or exhibition to the general public; and any  
16 trailer, pilot, video teaser or demo created primarily to stimulate the  
17 sale, marketing, promotion or exploitation of future investment in either  
18 a product or a qualified production via any means and media in any  
19 digital media format, film or videotape, provided such program meets  
20 all the underlying criteria of a qualified production. For state fiscal years  
21 ending on or after June 30, 2014, "qualified production" shall not include  
22 a motion picture that has not been designated as a state-certified  
23 qualified production prior to July 1, 2013, and no tax credit voucher for  
24 such motion picture may be issued for such motion picture, except, for  
25 state fiscal years ending on or after June 30, 2015, "qualified production"  
26 shall include a motion picture for which twenty-five per cent or more of  
27 the principal photography shooting days are in this state at a facility that  
28 receives not less than twenty-five million dollars in private investment  
29 and opens for business on or after July 1, 2013, and a tax credit voucher  
30 may be issued for such motion picture.

31 (B) "Qualified production" shall not include any ongoing television  
32 program created primarily as news, weather or financial market reports;  
33 a production featuring current events, other than a relocated television  
34 production, sporting events, an awards show or other gala event; a  
35 production whose sole purpose is fundraising; a long-form production  
36 that primarily markets a product or service; a production used for  
37 corporate training or in-house corporate advertising or other similar  
38 productions; or any production for which records are required to be  
39 maintained under 18 USC 2257, as amended from time to time, with  
40 respect to sexually explicit content.

41 (4) "Eligible production company" means a corporation, partnership,  
42 limited liability company, or other business entity engaged in the  
43 business of producing qualified productions on a one-time or ongoing  
44 basis, and qualified by the Secretary of the State to engage in business  
45 in the state.

46 (5) "Production expenses or costs" means all expenditures clearly and  
47 demonstrably incurred in the state in the preproduction, production or  
48 postproduction costs of a qualified production, including:

49 (A) Expenditures incurred in the state in the form of either  
50 compensation or purchases including production work, production  
51 equipment not eligible for the infrastructure tax credit provided in  
52 section 12-217kk, production software, postproduction work,  
53 postproduction equipment, postproduction software, set design, set  
54 construction, props, lighting, wardrobe, makeup, makeup accessories,  
55 special effects, visual effects, audio effects, film processing, music,  
56 sound mixing, editing, location fees, soundstages and any and all other  
57 costs or services directly incurred in connection with a state-certified  
58 qualified production;

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

70 (C) "Production expenses or costs" does not include the following: (i)  
71 On and after January 1, 2008, compensation in excess of fifteen million  
72 dollars paid to any individual or entity representing an individual, for  
73 services provided in the production of a qualified production and on or  
74 after January 1, 2010, compensation subject to Connecticut personal  
75 income tax in excess of twenty million dollars paid in the aggregate to  
76 any individuals or entities representing individuals, for star talent  
77 provided in the production of a qualified production; (ii) media buys,  
78 promotional events or gifts or public relations associated with the

79 promotion or marketing of any qualified production; (iii) deferred,  
80 leveraged or profit participation costs relating to any and all personnel  
81 associated with any and all aspects of the production, including, but not  
82 limited to, producer fees, director fees, talent fees and writer fees; (iv)  
83 costs relating to the transfer of the production tax credits; (v) any  
84 amounts paid to persons or businesses as a result of their participation  
85 in profits from the exploitation of the qualified production; and (vi) any  
86 expenses or costs relating to an independent certification, as required by  
87 subsection (h) of this section, or as the department may otherwise  
88 require, pertaining to the amount of production expenses or costs set  
89 forth by an eligible production company in its application for a  
90 production tax credit.

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

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

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

109 (9) "Post-certification remedy" means the recapture, disallowance,  
110 recovery, reduction, repayment, forfeiture, decertification or any other  
111 remedy that would have the effect of reducing or otherwise limiting the

112 use of a tax credit provided by this section.

113 (10) "Compensation" means base salary or wages and does not  
114 include bonus pay, stock options, restricted stock units or similar  
115 arrangements.

116 (11) "Relocated television production" means:

117 (A) An ongoing television program all of the prior seasons of which  
118 were filmed outside this state, and may include current events shows,  
119 except those referenced in subparagraph (B)(i) of this subdivision.

120 (B) An eligible production company's television programming in this  
121 state that (i) is not a general news program, sporting event or game  
122 broadcast, and (ii) is created at a qualified production facility that has  
123 had a minimum investment of twenty-five million dollars made by such  
124 eligible production company on or after January 1, 2012, at which  
125 facility the eligible production company creates ongoing television  
126 programming as defined in subparagraph (A) of this subdivision, and  
127 creates at least two hundred new jobs in Connecticut on or after January  
128 1, 2012. For purposes of this subdivision, "new job" means a full-time  
129 job, as defined in section 12-217ii, that did not exist in this state prior to  
130 January 1, 2012, and is filled by a new employee, and "new employee"  
131 includes a person who was employed outside this state by the eligible  
132 production company prior to January 1, 2012, but does not include a  
133 person who was employed in this state by the eligible production  
134 company or a related person, as defined in section 12-217ii, with respect  
135 to the eligible production company during the prior twelve months.

136 (C) A relocated television production may be a state-certified  
137 qualified production for not more than ten successive income years,  
138 after which period the eligible production company shall be ineligible  
139 to resubmit an application for certification.

140 (b) (1) The Department of Economic and Community Development  
141 shall administer a system of tax credit vouchers within the resources,  
142 requirements and purposes of this section for eligible production

143 companies producing a state-certified qualified production in the state.

144 (2) Any eligible production company incurring production expenses  
145 or costs shall be eligible for a credit (A) for income years commencing  
146 on or after January 1, 2010, but prior to January 1, 2018, against the tax  
147 imposed under chapter 207 or this chapter, (B) for income years  
148 commencing on or after January 1, 2018, but prior to January 1, 2022,  
149 against the tax imposed under chapter 207 or 211 or this chapter, and  
150 (C) for income years commencing on or after January 1, 2022, against the  
151 tax imposed under chapter 207, 211, 219 or this chapter, as follows: (i)  
152 For any such company incurring such expenses or costs of not less than  
153 one hundred thousand dollars, but not more than five hundred  
154 thousand dollars, a credit equal to ten per cent of such expenses or costs,  
155 (ii) for any such company incurring such expenses or costs of more than  
156 five hundred thousand dollars, but not more than one million dollars, a  
157 credit equal to fifteen per cent of such expenses or costs, and (iii) for any  
158 such company incurring such expenses or costs of more than one million  
159 dollars, a credit equal to thirty per cent of such expenses or costs.

160 (c) No eligible production company incurring an amount of  
161 production expenses or costs that qualifies for such credit shall be  
162 eligible for such credit unless on or after January 1, 2010, such company  
163 conducts (1) not less than fifty per cent of principal photography days  
164 within the state, or (2) expends not less than fifty per cent of  
165 postproduction costs within the state, or (3) expends not less than one  
166 million dollars of postproduction costs within the state.

167 (d) For income years commencing on or after January 1, 2010, no  
168 expenses or costs incurred outside the state and used within the state  
169 shall be eligible for a credit, and one hundred per cent of such expenses  
170 or costs shall be counted toward such credit when incurred within the  
171 state and used within the state.

172 (e) (1) On and after July 1, 2006, and for income years commencing  
173 on or after January 1, 2006, any credit allowed pursuant to this section  
174 may be sold, assigned or otherwise transferred, in whole or in part, to  
175 one or more taxpayers, provided (A) no credit, after issuance, may be

176 sold, assigned or otherwise transferred, in whole or in part, more than  
177 three times, (B) in the case of a credit allowed for the income year  
178 commencing on or after January 1, 2011, and prior to January 1, 2012,  
179 any entity that is not subject to tax under chapter 207 or this chapter may  
180 transfer not more than fifty per cent of such credit in any one income  
181 year, and (C) in the case of a credit allowed for an income year  
182 commencing on or after January 1, 2012, any entity that is not subject to  
183 tax under chapter 207 or this chapter may transfer not more than  
184 twenty-five per cent of such credit in any one income year.

185 (2) Notwithstanding the provisions of subdivision (1) of this  
186 subsection, any entity that is not subject to tax under this chapter or  
187 chapter 207 shall not be subject to the limitations on the transfer of  
188 credits provided in subparagraphs (B) and (C) of said subdivision (1),  
189 provided such entity owns not less than fifty per cent, directly or  
190 indirectly, of a business entity, as defined in section 12-284b.

191 (3) Notwithstanding the provisions of subdivision (1) of this  
192 subsection, any qualified production that is created in whole or in  
193 significant part, as determined by the Commissioner of Economic and  
194 Community Development, at a qualified production facility shall not be  
195 subject to the limitations of subparagraph (B) or (C) of said subdivision  
196 (1). For purposes of this subdivision, "qualified production facility"  
197 means a facility (A) located in this state, (B) intended for film, television  
198 or digital media production, and (C) that has had a minimum  
199 investment of three million dollars, or less if the Commissioner of  
200 Economic and Community Development determines such facility  
201 otherwise qualifies.

202 (4) (A) For the income year commencing January 1, 2018, any credit  
203 that is sold, assigned or otherwise transferred, in whole or in part, to one  
204 or more taxpayers pursuant to subdivision (1) of this subsection may be  
205 claimed against the tax imposed under chapter 211 only if there is  
206 common ownership of at least fifty per cent between such taxpayer and  
207 the eligible production company that sold, assigned or otherwise  
208 transferred such credit. Such taxpayer may only claim ninety-two per

209 cent of the amount of such credit entered by the department on the  
210 production tax credit voucher.

211 (B) For income years commencing on or after January 1, 2019, any  
212 credit that is sold, assigned or otherwise transferred, in whole or in part,  
213 to one or more taxpayers pursuant to subdivision (1) of this subsection,  
214 which credit is claimed against the tax imposed under chapter 211, shall  
215 be subject to the following limits:

216 (i) The taxpayer may only claim ninety-five per cent of the amount of  
217 such credit entered by the department on the production tax credit  
218 voucher; and

219 (ii) If there is common ownership of at least fifty per cent between  
220 such taxpayer and the eligible production company that sold, assigned  
221 or otherwise transferred such credit, such taxpayer may only claim  
222 ninety-two per cent of the amount of such credit entered by the  
223 department on the production tax credit voucher.

224 (5) For income years commencing on or after January 1, 2022, any  
225 credit that is claimed against the tax imposed under chapter 219 shall be  
226 subject to the following limits:

227 (A) Any credit that is sold, assigned or otherwise transferred, in  
228 whole or in part, to one or more taxpayers pursuant to subdivision (1)  
229 of this subsection may be claimed against the tax imposed under chapter  
230 219 only if there is common ownership of at least fifty per cent between  
231 such taxpayer and the eligible production company that sold, assigned  
232 or otherwise transferred such credit; and

233 (B) The eligible production company or taxpayer claiming the credit  
234 against the tax imposed under chapter 219 may only claim [seventy-  
235 eight] ninety-two per cent of the amount of such credit entered by the  
236 department on the production tax credit voucher.

237 (f) (1) On and after July 1, 2006, and for income years commencing on  
238 or after January 1, 2006, but prior to January 1, 2015, all or part of any  
239 such credit allowed under this section may be claimed against the tax



240 imposed under chapter 207 or this chapter for the income year in which  
241 the production expenses or costs were incurred, or in the three  
242 immediately succeeding income years.

243 (2) For production tax credit vouchers issued on or after July 1, 2015,  
244 but prior to January 1, 2018, all or part of any such credit may be claimed  
245 against the tax imposed under chapter 207 or this chapter, for the  
246 income year in which the production expenses or costs were incurred,  
247 or in the five immediately succeeding income years.

248 (3) For production tax credit vouchers issued on or after July 1, 2018,  
249 but prior to January 1, 2022, all or part of any such credit may be claimed  
250 against the tax imposed under chapter 207 or 211 or this chapter, for the  
251 income year in which the production expenses or costs were incurred,  
252 or in the five immediately succeeding income years.

253 (4) For production tax credit vouchers issued on or after January 1,  
254 2022, all or part of any such credit may be claimed against the tax  
255 imposed under chapter 207, 211, 219 or this chapter, for the income year  
256 in which the production expenses or costs were incurred, or in the five  
257 immediately succeeding income years.

258 (g) Any production tax credit allowed under this section shall be  
259 nonrefundable.

260 (h) (1) An eligible production company shall apply to the department  
261 for a tax credit voucher on an annual basis, but not later than ninety days  
262 after the first production expenses or costs are incurred in the  
263 production of a qualified production, and shall provide with such  
264 application such information as the department may require to  
265 determine such company's eligibility to claim a credit under this section.  
266 No production expenses or costs may be listed more than once for  
267 purposes of the tax credit voucher pursuant to this section, or pursuant  
268 to section 12-217kk or 12-217ll, and if a production expense or cost has  
269 been included in a claim for a credit, such production expense or cost  
270 may not be included in any subsequent claim for a credit.

271 (2) Not later than ninety days after the end of the annual period, or  
272 after the last production expenses or costs are incurred in the production  
273 of a qualified production, an eligible production company shall apply  
274 to the department for a production tax credit voucher, and shall provide  
275 with such application such information and independent certification as  
276 the department may require pertaining to the amount of such  
277 company's production expenses or costs. Such independent certification  
278 shall be provided by an audit professional chosen from a list compiled  
279 by the department. If the department determines that such company is  
280 eligible to be issued a production tax credit voucher, the department  
281 shall enter on the voucher the amount of production expenses or costs  
282 that has been established to the satisfaction of the department and the  
283 amount of such company's credit under this section. The department  
284 shall provide a copy of such voucher to the commissioner, upon request.

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

288 (i) If an eligible production company sells, assigns or otherwise  
289 transfers a credit under this section to another taxpayer, the transferor  
290 and transferee shall jointly submit written notification of such transfer  
291 to the department not later than thirty days after such transfer. If such  
292 transferee sells, assigns or otherwise transfers a credit under this section  
293 to a subsequent transferee, such transferee and such subsequent  
294 transferee shall jointly submit written notification of such transfer to the  
295 department not later than thirty days after such transfer. The  
296 notification after each transfer shall include the credit voucher number,  
297 the date of transfer, the amount of such credit transferred, the tax credit  
298 balance before and after the transfer, the tax identification numbers for  
299 both the transferor and the transferee, and any other information  
300 required by the department. Failure to comply with this subsection will  
301 result in a disallowance of the tax credit until there is full compliance on  
302 the part of the transferor and the transferee, and for a second or third  
303 transfer, on the part of all subsequent transferors and transferees. The  
304 department shall provide a copy of the notification of assignment to the

305 commissioner upon request.

306 (j) Any eligible production company that submits information to the  
307 department that it knows to be fraudulent or false shall, in addition to  
308 any other penalties provided by law, be liable for a penalty equal to the  
309 amount of such company's credit entered on the production tax credit  
310 voucher issued under this section.

311 (k) No tax credits transferred pursuant to this section shall be subject  
312 to a post-certification remedy, and the department and the  
313 commissioner shall have no right, except in the case of possible material  
314 misrepresentation or fraud, to conduct any further or additional review,  
315 examination or audit of the expenditures or costs for which such tax  
316 credits were issued. The sole and exclusive remedy of the department  
317 and the commissioner shall be to seek collection of the amount of such  
318 tax credits from the entity that committed the fraud or  
319 misrepresentation.

320 (l) The department, in consultation with the commissioner, shall  
321 adopt regulations, in accordance with the provisions of chapter 54, as  
322 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>from passage</i>	12-217jj

**FIN**      *Joint Favorable*

*The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.*

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**OFA Fiscal Note**

**State Impact:**

Agency Affected	Fund-Effect	FY 23 \$	FY 24 \$
Revenue Serv., Dept.	GF - Revenue Loss	Minimal	Minimal

Note: GF=General Fund

**Municipal Impact:** None

**Explanation**

The bill, which increases, from 78% to 92% of the original credit amount, the value of film and digital media production credits utilized by certain taxpayers against the sales and use tax. This results in a \$2.7 million General Fund revenue loss annually beginning in FY 23.

**The Out Years**

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

**OLR Bill Analysis****SB 385*****AN ACT CONCERNING THE AMOUNT OF THE DIGITAL MEDIA TAX CREDIT.*****SUMMARY**

Existing law allows certain taxpayers to apply their film and digital media production tax credits against the sales and use tax, but at a reduced amount. This bill increases this amount from 78% to 92% of the credits' value.

By law, eligible production companies and other taxpayers (i.e., transferees) may claim film and digital media production credits against the sales and use tax only if there is at least 50% common ownership between the transferee and eligible production company that transferred the credit. Similar limitations apply under existing law to credits claimed against the community antenna television systems tax. These credits may also be claimed against the corporation business and insurance premiums taxes at full face value and may be sold, assigned, or otherwise transferred to other taxpayers up to three times.

EFFECTIVE DATE: Upon passage

**COMMITTEE ACTION**

Finance, Revenue and Bonding Committee

Joint Favorable

Yea 40 Nay 10 (04/05/2022)