



# House of Representatives

General Assembly

**File No. 746**

January Session, 2023

Substitute House Bill No. 6919

*House of Representatives, May 8, 2023*

The Committee on Finance, Revenue and Bonding reported through REP. HORN of the 64th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

***AN ACT ESTABLISHING A TAX CREDIT FOR CERTAIN PRE-BROADWAY AND POST-BROADWAY THEATER PRODUCTIONS.***

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

1 Section 1. (NEW) (*Effective January 1, 2024, and applicable to income and*  
2 *taxable years commencing on or after January 1, 2024*) (a) As used in this  
3 section:

4 (1) "Accredited theater production" means a for-profit live stage  
5 presentation that is a pre-Broadway production or a post-Broadway  
6 production and is performed at a qualified production facility;

7 (2) "Advertising and public relations expenditures" means costs  
8 incurred within the state by an accredited theater production for goods  
9 or services related to the national marketing of, public relations for and  
10 creation and placement of print, electronic, television, billboard and  
11 other forms of advertising to promote the accredited theater production;

12 (3) "Payroll" means all salaries, wages, fees and other compensation,

13 including related benefits for services performed within the state, not  
14 exceeding two hundred fifty thousand dollars per week;

15 (4) "Pre-Broadway production" means a live stage presentation that,  
16 in its original or adaptive version, is performed at a qualified production  
17 facility and is scheduled to be presented in New York City's Broadway  
18 theater district not later than twelve months after the end date of such  
19 performance or performances in the state;

20 (5) "Post-Broadway production" means a live stage presentation that,  
21 in its original or adaptive version, is performed at a qualified production  
22 facility and opens its national tour in the state following a performance  
23 or performances of such presentation in New York City's Broadway  
24 theater district;

25 (6) "Production and performance expenditures" means a  
26 contemporaneous exchange of cash or cash equivalent for goods or  
27 services related to the development, production or performance of or  
28 operating expenditures incurred in the state for an accredited theater  
29 production, including, but not limited to, (A) expenditures for design,  
30 construction and operation, including sets, special and visual effects,  
31 costumes, wardrobe, make-up and accessories, (B) costs associated with  
32 sound, lighting, staging, facility expenses, rentals, per diems and  
33 accommodations, and (C) payroll, advertising and public relations  
34 expenditures and transportation expenditures;

35 (7) "Qualified production facility" means a facility located in the state  
36 at which live stage presentations are, or are intended to be, exclusively  
37 performed and that contains at least one stage, a seating capacity of one  
38 thousand or more seats and dressing rooms, storage areas and other  
39 ancillary amenities necessary for an accredited theater production; and

40 (8) (A) "Transportation expenditures" means expenditures for (i) the  
41 packaging, crating and transporting, to and from the state, of sets,  
42 costumes and other tangible property and equipment used or to be used  
43 in an accredited theater production, and (ii) the transporting of cast and  
44 crew members of an accredited theater production to and from the state.

45 (B) "Transportation expenditures" does not include any costs for the  
46 transporting of tangible property and equipment that are or will be used  
47 only for filming and not in an accredited theater production or any  
48 indirect costs, expenditures that are or will be reimbursed by a third  
49 party or any amounts that are paid to an individual or entity as a result  
50 of such individual's or entity's participation in profits from the  
51 exploitation of an accredited theater production.

52 (b) (1) Any production company that receives a final accredited  
53 theater production certificate pursuant to the provisions of subsection  
54 (c) of this section shall be allowed a credit against the tax imposed by  
55 chapter 207, 208, 212 or 229 of the general statutes, other than the  
56 liability imposed by section 12-707 of the general statutes, of thirty per  
57 cent of the production and performance expenditures of the accredited  
58 theater production.

59 (2) If the production company is an S corporation or an entity treated  
60 as a partnership for federal income tax purposes, the credit may be  
61 claimed by the production company's shareholders or partners. If the  
62 production company is a single member limited liability company that  
63 is disregarded as an entity separate from its owner, the credit may be  
64 claimed by such limited liability company's owner, provided such  
65 owner is subject to the tax imposed under chapter 208 or 229 of the  
66 general statutes.

67 (3) The credit allowed under this section (A) shall be claimed for the  
68 income or taxable year in which the credit was earned and may be  
69 carried forward for not more than three immediately succeeding income  
70 or taxable years, and (B) may be sold, assigned or otherwise transferred,  
71 in whole or in part.

72 (c) (1) Any individual, firm, partnership, trust, estate or other entity  
73 that is a production company of an accredited theater production or a  
74 sole proprietor, owner or member of a partnership that is a production  
75 company of an accredited theater production may apply to the  
76 Commissioner of Economic and Community Development, in such  
77 form and manner as prescribed by the commissioner, for initial

78 certification of an accredited theater production. The application shall  
79 include information about the accredited theater production and the  
80 production company presenting such production, the applicant's  
81 relationship to such production or production company, the qualified  
82 production facility at which such production will be performed and any  
83 other information and data the commissioner deems necessary to  
84 evaluate the application. If the commissioner approves the application,  
85 the commissioner shall issue a notice of initial certification to the  
86 production company and the Commissioner of Revenue Services.

87 (2) Upon completion of the accredited theater production  
88 performance or performances, the production company shall submit an  
89 application to the Commissioner of Economic and Community  
90 Development for a final certification of the accredited theater  
91 production. Such application shall include a cost report and a  
92 certification by a certified public accountant that such report, in such  
93 accountant's opinion, is accurate. The commissioner shall make a  
94 determination, not later than thirty days after a complete application has  
95 been submitted under this subdivision, whether to approve a final  
96 accredited theater production certificate and the amount of the credit to  
97 be allowed.

98 (3) The total amount of credits allowed pursuant to this section shall  
99 not exceed ten million dollars in any one fiscal year.

100 (4) If the commissioner approves a final accredited theater  
101 production certificate, the commissioner shall (A) issue such certificate  
102 to the production company and specify the amount of the credit  
103 allowed, and (B) provide notice of such final certification and the  
104 amount of the credit allowed to the Commissioner of Revenue Services.

105 (d) Any production company that submits information to the  
106 Commissioner of Economic and Community Development that such  
107 production company knows to be fraudulent or false shall, in addition  
108 to any other penalties provided by law, be liable for a penalty equal to  
109 the amount of such production company's credit allowed under this  
110 section.

111 (e) No credits sold, assigned or otherwise transferred pursuant to this  
112 section shall be subject to a post-certification remedy and the  
113 Commissioners of Economic and Community Development and  
114 Revenue Services shall have no right, except in the case of possible  
115 material misrepresentation or fraud, to conduct any further or  
116 additional review, examination or audit of the production and  
117 performance expenditures for which such credits were allowed. The  
118 sole and exclusive remedy of the commissioners shall be to seek  
119 collection of the amount of such credits from the production company  
120 that committed the fraud or misrepresentation.

121 (f) The Commissioners of Economic and Community Development  
122 and Revenue Services may, for purposes of determining the correctness  
123 of any credit claimed pursuant to this section, examine any books,  
124 papers and records relating to the information or data provided with an  
125 application for a final certification of the accredited theater production.

126 (g) Not later than March 1, 2025, and annually thereafter, the  
127 Commissioner of Economic and Community Development shall submit  
128 a report, in accordance with the provisions of section 11-4a of the general  
129 statutes, to the joint standing committees of the General Assembly  
130 having cognizance of matters relating to commerce and finance, revenue  
131 and bonding. Such report shall include, but not be limited to,  
132 information about any production companies that have applied in the  
133 preceding calendar year for initial or final certification of an accredited  
134 theater production, the status of such applications, descriptions of the  
135 production company, the accredited theater production and the  
136 qualified production facility at which the accredited theater production  
137 is or was presented and the amount of any credits allowed pursuant to  
138 this section in the preceding calendar year.

This act shall take effect as follows and shall amend the following sections:

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Section 1	<i>January 1, 2024, and applicable to income and taxable years commencing on or after January 1, 2024</i>	New section
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**FIN**      *Joint Favorable Subst.*

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.

**OFA Fiscal Note**

**State Impact:**

Agency Affected	Fund-Effect	FY 24 \$	FY 25 \$
Revenue Serv., Dept.	GF - Revenue Loss	None	Up to 10 million
Department of Economic & Community Development	GF - Cost	23,750	47,500
State Comptroller - Fringe Benefits <sup>1</sup>	GF - Cost	15,255	20,340
Revenue Serv., Dept.	GF - Cost	None	Up to 75,000

Note: GF=General Fund

**Municipal Impact:** None

**Explanation**

The bill, which establishes a tax credit for certain pre- and post-Broadway productions, results in (1) a General Fund revenue loss of up to \$10 million annually beginning in FY 25, (2) an annualized cost of \$67,840 to the Department of Economic and Community Development (DECD), and (3) a one-time cost of up to \$75,000 to the Department of Revenue Services (DRS).

**Cost Impact Details**

The bill results in an annualized cost of \$67,840 to DECD to administer the tax credit for theater productions.

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<sup>1</sup>The fringe benefit costs for most state employees are budgeted centrally in accounts administered by the Comptroller. The estimated active employee fringe benefit cost associated with most personnel changes is 42.82% of payroll in FY 24.

It is anticipated that DECD would require a 0.5 FTE position at an annualized cost of \$47,500 in salary and \$20,340 in fringe benefit costs to provide administrative oversight of the program, including the processing of applications for initial certification and final certification, as well as conduct any auditing necessary for an application for final certification of the credit.

Additionally, the bill results in a one-time cost of up to \$75,000 to DRS in FY 25 for programming updates to the CTax tax administration system and myconneCT online portal, and for form modification for multiple tax types.<sup>2</sup>

### ***The Out Years***

The annualized ongoing cost impact identified above would continue into the future subject to inflation. The revenue impact identified above would continue into the future subject to the \$10 million cap on total credits allowed annually under the bill.

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<sup>2</sup> Under the bill, the credit can be claimed against the personal income, corporation business, insurance premiums, and utility companies taxes.



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**OLR Bill Analysis****sHB 6919*****AN ACT ESTABLISHING A TAX CREDIT FOR CERTAIN PRE-BROADWAY AND POST-BROADWAY THEATER PRODUCTIONS.*****SUMMARY**

This bill establishes a new tax credit for production companies of eligible pre- and post-Broadway productions performed at qualified facilities in Connecticut. The credit equals 30% of the production's eligible expenditures, including up to \$250,000 of payroll per week. Taxpayers may apply it against the personal income tax or specified business taxes. The bill caps at \$10 million the total amount of these tax credits allowed per fiscal year.

EFFECTIVE DATE: January 1, 2024, and applicable to income and tax years starting on or after that date.

**QUALIFIED PRODUCTIONS AND FACILITIES**

Under the bill, to qualify for a credit, the production must be a for-profit live stage presentation of a pre- or post-Broadway production (in its original or adapted version) performed at a qualified production facility (i.e., an "accredited theater production"). A "pre-Broadway production" is one scheduled to be presented in New York City's Broadway theater district within 12 months after its performance in Connecticut, while a "post-Broadway production" is one that opens its national tour in Connecticut after a Broadway run.

A "qualified production facility" is a facility located in Connecticut where live stage presentations are, or are intended to be, exclusively performed. It must have at least one stage; a seating capacity of at least 1,000 seats; and dressing rooms, storage areas, and other related amenities needed for an accredited theater production.

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**ELIGIBLE EXPENDITURES*****Production and Performance Expenditures***

Under the bill, only eligible “production and performance expenditures” count towards the credit’s calculation. The bill defines these expenditures as the exchange of cash or its equivalent for goods or services related to developing, producing, or performing an accredited theater production or for its operating expenditures incurred in Connecticut. This includes expenditures for the following:

1. design, construction, and operation (e.g., sets, special and visual effects, costumes, wardrobe, make-up, and accessories);
2. sound, lighting, staging, facility expenses, rentals, per diems, and accommodations;
3. up to \$250,000 per week for salaries, wages, fees, and other compensation and benefits for services performed in Connecticut (“payroll”);
4. goods or services related to the production’s national marketing, public relations, and advertising (i.e., print, electronic, television, billboard, and other advertising types)(“advertising and public relations expenditures”); and
5. transportation, as described below.

The bill defines “transportation expenditures” as those for (1) packing, crating, and transporting, to and from Connecticut, sets, costumes, and other property and equipment for an accredited theater production and (2) transporting the production’s cast and crew to and from here. However, it excludes costs for any of the following:

1. transporting tangible property and equipment used only for filming and not in an accredited theater production and
2. indirect costs, expenditures reimbursed by a third party, or any amount paid to an individual or entity for their participation in the profits from the production’s exploitation.

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**CREDIT APPLICATION AND APPROVAL PROCESS*****Initial Certification***

Under the bill, an accredited theater production's production company (i.e., person, firm, partnership, trust, estate, or other entity) may apply to the Department of Economic and Community Development (DECD) commissioner, as she prescribes, for a production's initial certification. (In the case of a partnership, its sole proprietor, owner, or member may apply.) The application must include information about the following:

1. the accredited theater production and production company presenting it,
2. the applicant's relationship to the production or production company,
3. the qualified production facility where the production will be performed, and
4. any other information and data the commissioner deems needed to evaluate the application.

If the DECD commissioner approves the application, she must issue an initial certification notice to the production company and Department of Revenue Services (DRS) commissioner.

***Final Certification***

Once the accredited theater production's performance has been completed, the production company must apply to the DECD commissioner for a final certification. The application must include a cost report and a certified public accountant's certification that this report, in the accountant's opinion, is accurate.

The commissioner must, within 30 days after a production company submits a complete application, determine (1) whether to approve a final accredited theater production certificate and (2) the credit amount allowed. Once approved, she must (1) issue the certificate to the

production company and specify the credit amount allowed and (2) notify the DRS commissioner of this information.

## **CREDIT CLAIMS AND TRANSFERS**

### ***Applicable Taxes and Eligible Claimants***

Production companies that receive a final accredited theater production certificate from DECD may claim the credit against the personal income, corporation business, insurance premiums, or utility companies tax, but not the withholding tax. (Withholding tax is income tax paid on a taxpayer's behalf by qualifying Connecticut employers.) If the company is an S corporation or entity treated as a partnership for federal income tax purposes, its shareholders or partners may claim the credit. If it is a single member limited liability company (LLC) disregarded as an entity separate from its owner, the LLC's owners may claim it, as long as the owner is subject to the personal income or corporation business tax.

The credit must be claimed for the income or tax year in which it was earned. Unused credits may be carried forward for up to three years and may be sold, assigned, or transferred in whole or part.

### ***Financial Penalty***

The bill imposes a financial penalty equal to the credit amount on any production company that submits information to the DECD commissioner that it knows to be fraudulent or false. This penalty is in addition to other penalties provided by law.

### ***Limits on Post-Certification Remedies***

The bill (1) exempts any credits sold, assigned, or transferred under its provisions to a post-certification remedy and (2) limits the DECD and DRS commissioners' power to further audit or examine the production and performance expenditures for which the credit was allowed unless there is the possibility of material misrepresentation or fraud. The bill gives the commissioners the sole remedy of recovering the credits from the production company that committed the fraud or misrepresentation.

**Examinations**

The bill authorizes the DECD and DRS commissioners to examine the books, papers, and records related to the information or data an accredited theater production provided with its final certification application in order to determine that a credit claim is correct.

**REPORTING REQUIREMENT**

Annually, starting by March 1, 2025, the DECD commissioner must report specified information to the Commerce and Finance, Revenue and Bonding committees about each production company that applied in the previous calendar year for an accredited theater production initial or final certification. Specifically, the report must (1) describe the production companies and their accredited theater productions and production facilities and (2) provide the status of their applications and the amount of any credits allowed.

**COMMITTEE ACTION**

Finance, Revenue and Bonding Committee

Joint Favorable Substitute

Yea 48 Nay 3 (04/19/2023)