

SENATE BILL 3712
By Norris

AN ACT to amend Tennessee Code Annotated, Title 67,
relative to taxation of motion picture production
companies.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 67-6-530(a), is amended by deleting the first sentence in its entirety and by substituting instead the following language:

Beginning on and after July 1, 2006, the commissioner shall refund the total amount of sales and use taxes paid by a motion picture production company, of the type referred to in Major Group 78, Industry No. 7812 of the Standard Industrial Classification Manual of 1987, or equivalent grouping under the North American Industry Classification System, unless such motion picture production company has been issued a film investor tax credit pursuant to Section 2 of this act for the same production.

SECTION 2. Tennessee Code Annotated, Section 67-4-2009, is amended by adding the following language as a new subdivision:

(10)

(A) Beginning on July 1, 2006, there shall be allowed as a credit against the sum total of the taxes imposed by the franchise tax law, compiled in part 21 of this chapter, and by the excise tax law, compiled in this part, a film investor tax credit as provided pursuant to the provisions of this subdivision.

(B) For the purpose of this subdivision, unless the context otherwise requires:

(i) "Commission" means the Tennessee film, entertainment and music commission;

(ii) "Department" means the department of revenue;

(iii) "Production company" means any person that produces a film or movie in Tennessee;

(iv) "State-certified production" means a film or movie which has been certified by the Tennessee film, entertainment and music commission and the department of revenue as a production in which:

(a) At least fifty percent (50%) of the principal photography will be performed in Tennessee; and

(b) At least fifty percent (50%) of the total production costs will be expended in Tennessee; and

(v) "Total certified base investment" means the amount of total investment in Tennessee determined by the department based on the application for a state-certified production filed by a production company with the commission and any other information or documentation deemed necessary by the department.

(C) A production company producing a state-certified production shall be entitled to a film investor tax credit in the following amounts:

(i) Seventeen percent (17%) of the total certified base investment if such base investment is greater than five hundred thousand dollars (\$500,000) per project in any twelve (12) month period;

(ii) Twenty percent (20%) of the total certified base investment if such base investment is greater than five hundred thousand dollars (\$500,000) per project in any twelve (12) month period and, in addition, at least twenty thousand dollars (\$20,000) per project will be expended in Tennessee on music recorded in Tennessee or created by Tennessee residents; or

(iii) Twenty-two percent (22%) of the total certified base investment if such base investment is greater than five hundred thousand dollars (\$500,000) per project in any twelve (12) month period, and at least twenty-five percent (25%) of the crew and cast will be Tennessee residents.

(D) A production company seeking a film investor tax credit shall submit an application to the commission on a form prescribed by the department. An applicant shall provide all additional information necessary for a complete review of the application including, but not limited to, accounting records, budgets and other financial materials relating to the proposed production. The commission shall review all materials and make an initial determination as to whether the proposed production qualifies as a state-certified production. If, in the discretion of the commission, such production does qualify as a state-certified production, the commission shall forward the application and all accompanying materials to the department for review. If the department concludes that a production is a state-certified production, the department shall determine the total certified base investment for the production. Based on the total certified base investment and other qualify factors pursuant to the provisions of this subdivision, the department shall award a film investor tax credit in an amount consistent with the provisions of subdivision (10)(C) to the production company; provided, that as a condition precedent to receiving any credit, a production company shall sign a statement of intent to begin production of such state-certified production within eighteen (18) months of receiving a film investor tax credit for such production.

(E) A film investor tax credit shall be issued upon a certificate in the name of the production company. In accordance with rules and regulations established by the department, a film investor tax credit is assignable and transferable between taxpayers subject to taxation pursuant to the provisions of this part or part 21 of this chapter;

provided, that any such credit shall be used against tax liabilities arising under this part or part 21 of this chapter within five (5) years from the date the credit was issued by the department as evinced by the date of issuance on the face of the certificate. A taxpayer shall present the original certificate when filing a return under this chapter. If the amount of the credit exceeds the taxpayer's liability, any balance of the credit remaining may be claimed against taxes imposed for any succeeding year; provided, that any such balance shall be used within five (5) from the date the credit was originally issued by the department as evinced by the date of issuance on the face of the original certificate.

(F) No refund shall be issued for any unused credit, or unused balance of a credit, issued pursuant to the provisions of this subdivision.

(G) A production company that has been issued a film investor tax credit pursuant to the provisions of this subdivision that fails to begin production of such state-certified production within twenty-four (24) months from the date of issuance of such credit shall be liable to the state for the total amount of any credit issued for which the certificate is not returned to the department plus interest from the date of issuance. The department shall establish other procedures to ensure commitments made pursuant to this subdivision are fulfilled including, but not limited to, civil penalties.

SECTION 3.

(a) The department of revenue is authorized to promulgate rules and regulations as the department of revenue may deem necessary to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(b) Notwithstanding the provisions of §§4-5-208 and 4-5-209 or any other provision of law to the contrary, the department of revenue is authorized to promulgate public necessity rules and emergency rules to implement the provisions of this act.

SECTION 4. This act shall take effect upon becoming a law, the public welfare requiring it.