HOUSE OF REPRESENTATIVES

SB 1409
motion picture production tax credits
Sponsors: Senators Nelson, Miranda, Verschoor, et al.

DP	Committee on Commerce	
X	Caucus and COW	*****REVISED*****
	House Engrossed	

SB 1409 repeals the current individual and corporate income tax credit for motion picture production costs, establishes a new refundable individual and corporate income tax credit for motion picture production costs, and continues the current individual and corporate income tax credit for motion picture infrastructure projects.

History

The Motion Picture Production Tax Incentive Program (MOPIC) was established by the Arizona Legislature in 2005 (effective January 1, 2006) and placed under the regulatory authority of the Arizona Department of Commerce (ADOC) in order to promote and stimulate the motion picture industry in Arizona. MOPIC offers income tax credits to qualifying businesses for motion picture production costs, commercial advertisement and music video production costs, and motion picture infrastructure projects. MOPIC also offers a transaction privilege and use tax exemption for certain activities related to motion picture production. Current statute prohibits ADOC from approving any new tax incentives under MOPIC after December 31, 2010.

Motion Picture Production Costs

To qualify for the production income tax credit, a company must be primarily engaged in production of motion pictures, have a physical office and bank account in Arizona, invest at least $250,000 in qualifying production costs for each motion picture, and employ the statutory required percentage of Arizona residents during production. The amount of the credit is based on a percentage of the motion picture production costs paid in this state: for companies that spend between $250,000 and $1 million, the credit is equal to 20% of the costs; for companies that spend more than $1 million, the credit is equal to 30% of the costs. The tax credit is not refundable, but any unused tax credit may be carried forward for up to five years and any or all of the credit may sold or transferred to another taxpayer.

The credit is capped per movie and the total aggregate credits are capped per tax year. The unused amount in the aggregate cap in any tax year may be reallocated to the next year, increasing the next year's cap. Beginning in 2008, 5% of the aggregate cap is set aside specifically for commercial advertisement and video production. The following chart illustrates the current requirements of the production income tax credit:

Tax Year	Arizona Residents	Cap Per Year	Cap Per Movie
2006	25%	$30 M	-
2007	35%	$40 M	$5 M
2008	50%	$50 M	$7 M
2009	50%	$60 M	$8 M
2010	50%	$70 M	$9 M

Motion Picture Infrastructure Projects

In 2007, MOPIC was expanded to include an income tax credit for motion picture infrastructure (effective October 31, 2007). To qualify for the infrastructure income tax credit, a company must own and operate a motion picture infrastructure project, meaning a soundstage or support and augmentation facilities constructed in Arizona and primarily used for motion picture production, but not including motion picture theaters or other commercial exhibition facilities. Additionally, for soundstage projects, the company must spend at least $250,000 on project expenses within 90 days of being approved by ADOC for the program, an additional $1 million on project expenses within 12 months, and at total of at least $5 million within 36 months. For support and augmentation facilities, the company must spend at least $250,000 on project expenses within 90 days of being approved by ADOC and a total of at least $1 million within 36 months.

The amount of the credit is equal to 15% of the total base investment in the project. The credit is capped per project, and the total aggregate amount of credits in any tax year is subject to the cap listed above. The tax credit is not refundable, but any unused tax credit may be carried forward for up to five years and any or all of the credit may sold or transferred to another taxpayer. The following chart illustrates the credit cap per project:

Tax Year	Cap Per Soundstage	Associated Support and Augmentation Facilities	Cap for Support and Augmentation Facilities Not Associated With a Soundstage
2008	$5 M	-	$3 M
2009	$5 M	$7 M if at least one soundstage project was certified in 2008	$3 M
2010	$5 M	$9 M if 1 or more soundstage projects were certified in 2008 or 2009	$3 M

MOPIC Fiscal History

The following chart illustrates the use of the MOPIC tax credits:

Tax Year / Classification	# of claims	Credit Available	Credit Used	Carry Forward
2006				
Corporate	2	///////////////	////////////	///////////////
Individual	0	0	0	0
2007				
Corporate	*8*	*$6,822,746*	*$1,209,422*	*$5,613,304*
Individual	4	$153,184	$128,165	$25,019
2008				
Corporate				
Individual	*5*	*$139,458*	*$108,645*	*$30,815*

(Source: Arizona Department of Revenue Income Tax Credit Report 2009;
slashes indicate that release of the data would violate confidentiality laws; italics indicate preliminary numbers)

According to the Department of Revenue (DOR), 14 motion picture tax credits have been sold or transferred to other taxpayers. Of those 14 credits, 8 were then resold to 24 other taxpayers.

According to ADOC's MOPIC Annual Report for 2008, although the amount of spending in Arizona by production companies more than doubled, the fiscal impact did not cover the cost of the incentives to the state General Fund:

	TY 2007	TY 2008
Estimated Tax Revenues Generated	$1,111,979	$2,317,566
Total Arizona Tax Incentives Post-approved	$2,813,478	$8,641,589
Net Cost to the GF	**($1,701,499)**	**($6,324,023)**

<u>Fiscal Impact</u>

According to the fiscal note, the Joint Legislative Budget Committee (JLBC) estimates SB 1409 would reduce corporate and individual income tax collections by between $(10) million and

$(40) million beginning in FY 2011-12. This is in addition to the estimated $(8) million in existing MOPIC tax credits already included in the General Fund baseline. JLBC reviewed other states' dynamic analysis estimates of the effect of motion picture tax credits and concluded these types of incentives typically offset about 15% to 20% of the direct revenue loss as a result of the increase in economic activity.

Provisions

Motion Picture Production Costs – Qualified Production Expenditures

- Repeals the individual and corporate income tax credit for motion picture production costs after TY 2010.
- Establishes a new individual and corporate income tax credit beginning in TY 2011 for qualified production expenditures (QPEs) submitted by the company and verified by DOR.
- Outlines the requirements a production company must meet in order to qualify for the credit, including:
  - At least $250,000 in QPEs.
  - At least 25% of its full-time employees must be residents of Arizona.
  - Entering into a limited managed audit agreement, conducted by an independent certificated public accountant (CPA) and accepted by DOR, to confirm the amount of credit.
- Stipulates the amount of the credit, based on QPEs and not to exceed $15 million for any individual production, as follows:
  - 17.5% for expenditures between $250,000 and $1 million.
  - 20% for expenditures exceeding $1 million.
  - An additional 5% if the production company uses a privately funded production facility (PFPF) for at least 50% of the production, and the PFPF has a certified infrastructure investment of at least $50 million.
- Prohibits a taxpayer from claiming a QPE income tax credit and an infrastructure tax credit for the same costs.
- Allows any portion of the tax credit not used as an offset against income taxes to be refunded to the taxpayer.
- Limits the total aggregate amount of credits approved by DOR in any tax year to $70 million, with $4 million reserved for commercial advertisements and music video production and $10 million reserved for the purposes of infrastructure credits.
- Specifies the credit is in lieu of any allowance for state tax purposes of a deduction of QPEs allowed by the Internal Revenue Code.
- Requires a PFPF to enter into a limited managed audit agreement, conducted by an independent CPA and submitted to DOR, to verify its infrastructure investment.
- Instructs DOR to certify the value of the infrastructure investment of a PFPF within 30 days of receiving an application.
- Requires a certified PFPF to maintain data on the number of productions using its facility each year and submit an annual report to the Speaker of the House and the President of the Senate by December 31.
- Prohibits DOR from allowing a credit if DOR determines the production constitutes an obscene motion picture film or obscene pictorial publication, depicts sexual activity as defined in the criminal code for sexual exploitation of children, or would constitute sexual exploitation of a minor or commercial sexual exploitation of a minor.

Motion Picture Infrastructure Projects

- Removes the ability of a taxpayer to sell or transfer any unused portion of the infrastructure income tax credit to another taxpayer beginning in TY 2011.
- Removes the requirement for a taxpayer to be certified by ADOC to claim the credit and instead requires the taxpayer to apply to DOR for the credit.

Miscellaneous

- Stipulates this act does not affect the validity of any motion picture income tax credits granted under prior law.
- Prohibits the Joint Legislative Income Tax Credit Review Committee from reviewing the motion picture income tax credits in 2010.
- Defines *infrastructure investment*, *privately funded production facility*, *production company*, *qualified production expenditure*, *soundstage*, and *support and augmentation facilities*.
- Makes technical and conforming changes.
- Contains a purpose clause.