

2009 ME H 1005 , Enacted - Public Law

Maine

SUMMARY: Makes changes to the State's incentives to provide more effective strategies for attracting visual media productions to the State; changes the references to media production to visual media production; replaces the existing income tax credit and reimbursement for certain production wages with a refundable income tax credit that is a percentage of direct production expenditures in the State.~SAME AS:

State Net Legislative History and Analysis

Changes in Bill text reflected as:

~~Text Deleted~~

Text Added

~~Text Vetoed~~

Current Legislative Status

04/07/2009 INTRODUCED.

04/07/2009 Filed as LR 623.

04/08/2009 HOUSE refers to JOINT Committee on TAXATION.

04/09/2009 SENATE refers to JOINT Committee on TAXATION in concurrence.

06/05/2009 From JOINT Committee on TAXATION: Ought to Pass as Amended.

06/08/2009 In HOUSE. Committee Amendment A adopted.

06/08/2009 In HOUSE. Engrossed as amended by Committee Amendment A.

06/08/2009 In SENATE. Committee Amendment A adopted.

06/08/2009 In SENATE. Engrossed as amended by Committee Amendment A.

06/10/2009 In HOUSE. Passed to be enacted.

06/10/2009 Placed on SPECIAL APPROPRIATIONS TABLE.

06/11/2009 Removed from SPECIAL APPROPRIATIONS TABLE.

06/11/2009 SENATE commits to JOINT Committee on TAXATION.

06/12/2009 HOUSE recesses.

06/12/2009 HOUSE commits to JOINT Committee on TAXATION.

06/13/2009 124th Legislature -- First Regular Session Adjourned - 06/13/09 - Carried Over to Next Session.

02/01/2010 From JOINT Committee on TAXATION: Ought to Pass as Amended.

02/02/2010 HOUSE accepts Committee Report.

02/02/2010 In HOUSE. Committee Amendment B adopted.

02/04/2010 In HOUSE. Engrossed as amended by Committee Amendment B.

02/04/2010 In SENATE. Committee Amendment B adopted.

02/09/2010 In SENATE. Engrossed as amended by Committee Amendment B.

02/11/2010 In HOUSE. Passed to be enacted.

02/17/2010 In SENATE. Passed to be enacted in concurrence.

02/17/2010 Eligible for GOVERNOR'S desk.

02/23/2010 Signed by GOVERNOR.

02/23/2010 Public Law No. 470

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session: Maine 124th Legislature -- First Regular Session

cite: 2009 ME H 1005

Enacted - Public Law

February 23, 2010

Watson

HP1005 LD 1449 PUBLIC Law, Chapter 470 LR 623 Item 1

on - Second Regular
Session - 124th Maine
Legislature

An Act To Expand Tax Incentives for Visual Media Productions

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 5 MRSA Section 13090-L, as enacted by PL 2005, c. 519, Pt. GG, Section 1, is amended to read:

Section 13090-L. Visual media production certification

1. Generally. A *visual* media production company that intends to undertake a *visual* media production in this State may apply to the department to have the production, or a portion of the production, certified under subsection 3 for purposes of *the visual* media production reimbursement pursuant to Title 36, chapter 919A and the credit under Title 36, section 5219Y.

~~2. **Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.~~

~~A. **"Media production"** means a single-medium or multimedia feature film, television show or series, video, commercial, photographic project, interactive computer or video game or other program intended for a national audience and fixed on film, video tape, computer disk, laser disc or other delivery medium that can be viewed or reproduced and that is exhibited in theaters or by individual television stations or groups of stations, television networks or cable television stations or via other means or licensed for home viewing or use.~~

~~"Media production" does not include:~~

~~(1) A news, current events or public programming show or a program that includes weather or market reports;~~

~~(2) A talk show;~~

~~(3) A sports event or activity;~~

~~(4) A gala presentation or awards show;~~

~~(5) A finished production that solicits funds; or~~

~~(6) A production produced by a media production company if records, as required by 18 United States Code, Section 2257, are to be maintained by that media production company with respect to any performer portrayed in that production.~~

~~B. **"Media production company"** means a person engaged in the business of producing a media production.~~

~~C. **"Media production expense"** means an expense directly incurred during the creation of a media production. This term includes wages and salaries of individuals employed in the production on which taxes have been paid or accrued; the cost of construction, operations, editing and related services, still and motion photography, sound recording and synchronization, lighting, wardrobe and accessories; and the rental of facilities and equipment, including location fees. The term does not include expenses incurred in marketing and advertising a media production or in printing or otherwise disseminating a media production.~~

~~D. **"Person"** has the same meaning as in Title 36, section 111, subsection 3.~~

2-A. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Digital media project" means visual and audio content on an electronic, digital medium and created, referred to and distributed electronically. "Digital media project" includes publicly accessible websites, computer multimedia, video and computer games and digital video discs.

B. "Maine State Film Office" means the Maine State Film Office established in the Office of Tourism pursuant to section 13090I.

C. "Person" has the same meaning as in Title 36, section 111, subsection 3.

D. "Visual media production" means a single-medium or multimedia feature film, television show or series, video, digital media project or photographic project intended for a local, regional, national or international audience and fixed on film, videotape, computer disk, laser disc or other delivery medium that can be viewed or reproduced and that is exhibited in theaters or by individual television stations or groups of stations, television networks or cable television stations or via other means or licensed for home viewing or use. "Visual media production" does not include:

(1) A news, current events or public programming show or a program that includes weather or market reports;

(2) A talk show;

(3) A sports event or activity;

(4) A gala presentation or awards show;

(5) A finished production that solicits funds; or

(6) A production for which records are required to be maintained by 18 United States Code, Section 2257.

E. "Visual media production company" means a person engaged in the business of producing a visual media production.

F. "Visual media production expense" means an expense directly incurred in this State for preproduction, production or postproduction of a visual media production certified under this section. "Visual media production expense" includes wages and salaries of individuals employed in the production on which taxes have been paid or accrued if those wages do not exceed \$50,000 per individual and payments to a temporary employee-leasing company, as defined in Title 36, section 690I, subsection 3A, and other contractual payments for the services of individuals working in the State if those payments do not exceed \$50,000 per individual providing services in the production. "Visual media production expense" includes the cost of construction; operations; editing and related services; music, photography and film processing, including transferring film to tape or a digital format; sound recording, mixing and synchronization; lighting, makeup, wardrobe and accessories; transportation; food and lodging for cast and crew; insurance and bonding; and the rental of facilities and equipment, including location fees. "Visual media production expense" does not include expenses incurred in marketing or advertising a visual media production or in printing or disseminating a visual media production.

3. Requirements for visual media production certificate. Applications for a *visual* media production certificate must be made on a form prescribed and furnished by the department. The applicant must:

A. Provide the names of the principals involved in the *visual* media production and contact information for them;

B. Provide a certificate of insurance for the *visual* media production;

C. Provide financial information that demonstrates that the *visual* media production is ~~economically sound~~ *fully financed* and that at least ~~\$250,000~~ *\$75,000* of *visual* media production expense will be incurred ~~in Maine during a period of 12 consecutive months~~ *for the visual media production certified in accordance with this subsection* ;

D. Provide data demonstrating that the *visual* media production will benefit the people of the State by increasing opportunities for employment and will strengthen the economy of the State;

E. Agree to include, in ~~all the~~ certified *visual* media ~~productions~~ *production* , an on-screen credit for the State of Maine. The exact wording and size of that credit must be determined in rules adopted by the Maine State Film Office and the department. The Maine State Film Office or the department may, at its discretion, exempt *visual* media productions from this requirement. Rules adopted pursuant to this paragraph are routine technical rules as defined in chapter 375, subchapter 2A;

F. Provide evidence that the *visual* media production company is not owned by, affiliated with or controlled by, in whole or in part, a person that is in default on a loan made by the State or a loan guaranteed by the State; ~~and~~

G. Provide any other information required by the department ~~+~~; and

H. Provide a projected schedule for preproduction, production and postproduction of the visual media production that shows that the production will begin within 60 days after certification pursuant to this subsection.

To qualify for a *visual* media production certificate, a *visual* media production company must demonstrate to the satisfaction of the commissioner that the *visual* media production company has met, or will meet, the ~~expectations and requirements under paragraphs B, C, D, E, F and G~~ *requirements of this subsection* . If the department determines that the applicant does not qualify for a *visual* media production certificate, it must inform the applicant of that determination in writing within 4 weeks of receiving the application. As soon as practicable, the department shall issue a *visual* media production certificate for a *visual* media production that qualifies. The department shall include with the certificate information regarding ~~qualification for a tax reimbursement and credit certificate pursuant to~~ *the tax credit report under* subsection 4 and procedures for claiming reimbursement under Title 36, chapter 919A and the credit under Title 36, section 5219Y.

4. Certified visual media production report. ~~Within~~ *No later than* 4 weeks ~~of~~ *after* completion of a certified *visual* media production, the *visual* media production company shall ~~confirm~~ *report, in a format specified by the Maine State Film Office or the department,* its compliance with the requirements of subsection 3 with respect to the certified *visual* media production *to the Maine State Film Office and the State Tax Assessor* . ~~Upon determining compliance by the media production company, the department shall issue to the company a tax reimbursement and credit certificate. The tax reimbursement and credit certificate entitle the media production company to claim the reimbursement provided by Title 36, chapter 919A and the credit under Title 36, section 5219Y.~~

5. Department to provide information to State Tax Assessor. The department shall provide to the State Tax Assessor copies of ~~tax reimbursement and credit certificates~~ *the visual media production certificate* issued ~~in accordance with~~ *pursuant to* subsection ~~4~~ *3* , together with any other information reasonably required by the State Tax Assessor for the administration of *visual* media production reimbursement under Title 36, chapter 919A and the credit under Title 36, section 5219Y.

6. Rulemaking. The department shall develop rules as necessary to administer this section in cooperation with the State Tax Assessor. Rules adopted pursuant to this section are routine technical rules as defined in chapter 375, subchapter 2A.

7. Report. The Maine State Film Office shall submit a report by January 15th annually to the joint standing committee of the Legislature having jurisdiction over taxation matters regarding the certification and reporting process pursuant to this section and the visual media production tax credit and reimbursement activities pursuant to Title 36, section 5219Y and Title 36, chapter 919A. The report must include a description of any rule-making activity related to the implementation of the credit and reimbursement activities, outreach efforts to visual media production companies, the number of applications for the visual media production credit and tax reimbursement, the number of credits and reimbursements granted, the revenue loss associated with the credit and reimbursement and the amount of visual media production expenses generated in the State as a result of the credit and reimbursement.

Sec. 2. 10 MRSA Section 1100-T, sub-Section 2, Paragraph B, as amended by PL 1999, c. 504, Section 10, is further amended to read:

B. The Maine business must be a manufacturer; must provide a product or service that is sold or rendered, or is projected to be sold or rendered, predominantly outside of the State; must be engaged in the development or application of advanced technologies; *must be certified as a visual media production company under Title 5, section 13090L*; or must bring capital into the State, as determined by the authority.

Sec. 3. 10 MRSA Section 1100-T, sub-Section 2-A, Paragraph B, as amended by PL 1997, c. 774, Section 1, is further amended to read:

B. As used in this subsection, unless the context otherwise indicates, an "eligible business" means a business located in the State that:

(1) Is a manufacturer;

- (2) Is engaged in the development or application of advanced technologies;
- (3) Provides a service that is sold or rendered, or is projected to be sold or rendered, predominantly outside of the State; ~~or~~
- (4) Brings capital into the State, as determined by the authority ~~or~~; *or*
- (5) Is certified as a visual media production company under Title 5, section 13090L.*

Sec. 4. 36 MRSA Section 191, sub-Section 2, Paragraph MM, as reallocated by PL 2009, c. 361, Section 15, is amended to read:

MM. The disclosure to an authorized representative of the Department of Economic and Community Development of information required for the administration of the *visual* media production credit under section 5219Y, the employment tax increment financing program under chapter 917, the *visual* media production reimbursement program under chapter 919A or the Pine Tree Development Zone program under Title 30-A, chapter 206, subchapter 4.

Sec. 5. 36 MRSA Section 5219-Y, as enacted by PL 2005, c. 519, Pt. GG, Section 2, is repealed and the following enacted in its place:

Section 5219-Y . Certified visual media production credit

1. Credit allowed. A visual media production company, as defined in Title 5, section 13090-L, subsection 2-A, paragraph E, is allowed a credit against the taxes imposed by this Part in an amount equal to 5% of the visual media production expenses, as defined in Title 5, section 13090L, subsection 2A, paragraph F, if the visual media company has visual media production expenses of \$75,000 or more. For purposes of this section, "visual media production expenses" does not include wages, salaries, commissions or any other form of compensation or remuneration paid to employees for personal services.

2. Limitation. The credit allowed by this section may not reduce the tax otherwise due under this Part below zero and may be used only for the taxable year in which the certified visual media production, as defined in section 6901, subsection 1, is completed. Taxpayers claiming a credit under section 5219W are not eligible for this credit.

Sec. 6. 36 MRSA Section 6901, as enacted by PL 2005, c. 519, Pt. GG, Section 3, is amended to read:

Section 6901. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Certified visual media production. "Certified *visual* media production" means a *visual* media production that has been certified by the Department of Economic and Community Development ~~for eligibility~~ *as eligible* for reimbursement under this chapter in accordance with Title 5, section 13090L.

2. Certified production wages. "Certified production wages" means wages that are paid ~~during the project period~~ by a *visual* media production company ~~that has been issued a tax reimbursement certificate in accordance with Title 5, section 13090L~~ *for work on a certified visual media production* and that are subject to withholding pursuant to chapter 827. *"Certified production wages" includes payments to a temporary employee-leasing company and payments for the services of performing artists working in the State.* "Certified production wages" does not include any wages in excess of ~~\$1,000,000~~ *\$50,000* paid to a single individual for personal services rendered in connection with a particular certified *visual* media production.

3. Commissioner. "Commissioner" means the Commissioner of Administrative and Financial Services.

3-A. Temporary employee-leasing company. "Temporary employee-leasing company" means a business that contracts with a visual media production company to supply workers to perform services for a certified visual media production or a private employment agency that contracts with a visual media production company to supply workers to perform services for a certified visual media production on a temporary help basis.

4. Visual media production. "~~Media~~ *Visual media* production" has the same meaning as in Title 5, section 13090L, subsection ~~2-2-A~~ , paragraph ~~A-D~~ .

5. Visual media production company. ” ~~Media-~~ *Visual media* production company“ has the same meaning as in Title 5, section 13090L, subsection ~~2- 2-A~~ , paragraph ~~B- E~~ .

~~6- . Project period. ”Project period“ means the period of time, not to exceed 12 consecutive months, that a media production company is engaged in the business of producing a media production or productions.~~

7. Resident of Maine. ”Resident of Maine“ means a person who:

A. Filed as a resident individual under Part 8 on that person's most recently filed Maine income tax return;

B. ~~If no income tax return was required, who could-~~ *Could* have filed as a resident individual under Part 8 if a return had been required *in a case where no income tax return was required* ; or

C. Was claimed, or could have been claimed, as a dependent on the Maine income tax return of an individual who filed as a resident individual under Part 8 on the filer's most recently filed Maine income tax return.

Sec. 7. 36 MRSA Section 6902, as amended by PL 2009, c. 361, Section 35, is further amended to read:

Section 6902. Reimbursement allowed; procedure; audits

1. Generally. A *visual* media production company certified pursuant to Title 5, section 13090L is allowed a reimbursement equal to 12% of certified production wages paid to employees who are residents of Maine and 10% of certified production wages paid to other employees.

2. Procedure for reimbursement. Within 6 weeks following ~~receipt-~~ *submission* of ~~a tax reimbursement and credit certificate-~~ *the certified visual media production report* pursuant to Title 5, section 13090L, subsection 4, a *visual* media production company shall report to the State Tax Assessor that portion of certified production wages paid ~~during the project period-~~ *for the certified visual media production* , together with any additional information the assessor may reasonably require. The assessor shall certify to the State Controller the amounts to be transferred to the *visual* media production reimbursement account established, maintained and administered by the State Controller from General Fund undedicated revenue within the withholding tax category. The assessor shall pay those amounts to each *visual* media production company within 90 days of the receipt by the assessor of the *visual* media production company's report.

3. Audit process. This chapter may not be construed to limit the authority of the State Tax Assessor to conduct an audit of any *visual* media production company certified pursuant to Title 5, section 13090L. When the assessor determines that a distribution larger than that authorized by this chapter has been received by any person, the assessor may enforce repayment of the overpayment by assessment pursuant to the provisions of chapter 7 or may apply the overpayment against subsequent reimbursements made pursuant to this chapter. If the assessor determines that an overpayment is the result of fraud on the part of a *visual* media production company, the assessor may disqualify that company from receiving any future distributions pursuant to this chapter.

Sec. 8. Maine Revised Statutes headnote amended; revision clause. In the Maine Revised Statutes, Title 36, chapter 919A, in the chapter headnote, the words ”media production reimbursement“ are amended to read ”visual media production reimbursement“ and the Revisor of Statutes shall implement this revision when updating, publishing or republishing the statutes.