

COMMITTEE ON REVENUE ~ BILL SUMMARY

Bill Number: H.3823

Name: AN ACT PROVIDING INCENTIVES TO THE MOTION PICTURE INDUSTRY.

Sponsor(s): Rep. Thomas J. O'Brien (Kingston)
also Rep. Brian Wallace (Boston)
Rep. James B. Leary (Worcester)
Rep. Robert K. Coughlin (Dedham)
and James A. MacDonald (of Dedham)

Hearing Date: May 10, 2005

Prior History: None

Current Law: G.L. c. 64H (*Sales Tax*) imposes a tax of 5% of the price paid on all retail sales in the Commonwealth,¹ unless specifically exempted.²

Summary of Proposed Law:

Sales & Use Tax:

Bill seeks to exempt the following from the *Sales & Use Tax*:

- Purchases made in connection with the filming or production³ of motion picture(s)⁴ in the Commonwealth by a motion picture production company for which it "intends to expend" at least \$250,000 in the aggregate in the Commonwealth⁵ in a 12-month period.

¹ G.L. c. 64I governs *Use Tax*, which is, in substance, identical to the *Sales Tax* (same 5%), but imposed on goods purchased outside the Commonwealth for use, storage or consumption inside the Commonwealth. The same exemptions apply against the *Use Tax* as those that apply against the *Sales Tax*. No person is held to pay both the *Sales Tax & Use Tax* on the same purchased item.

² **Sales & Use Tax Exemptions:**

Exemptions include, but are not limited to:

- Sales to any charitable organization of goods to be used for charitable purposes.
- Sales of building materials and supplies to be used in the construction or repair of public property.
- Sales of fuels (including gas, diesel, home or factory heating oil, train & jet fuel) and alcoholic beverages.
- Sales of food products for human consumption (not including prepared meals).
- Sales of articles of clothing (only \$175 of price paid per single article is exempt).
- Sales of prescription medicines and specified medical appliances (e.g., wheelchairs, glasses, insulin needles and syringes, hearing aids, artificial limbs, &c.)
- Sales of newspapers, magazines, textbooks, books used for religious worship, &c.
- Sales of coffins, caskets, burial garments, &c.
- Sale of a motor vehicle purchased by and for the use of a physically disabled person.
- Sales of the flag of the United States.
- Sales of primary residential alternative energy source equipment (e.g., solar panels, windmill).
- Sales of commercial gun safes and trigger lock devices.
- Sales of aircraft & parts.

Production company must file estimate of expenditures w/ Executive Office of Economic Development prior to start of filming.

All qualifying expenditures must be made through a checking account at a Mass. Bank.

Failure to meet \$250,000 threshold results in liability for all Sales Tax thus waived + interest.

Employment-based Credit against Income Tax/Corporate Excise:

Credit against Mass. Income Tax/Corporate Excise for production company:

1. filming in Mass.
2. with Mass. production costs of \$250,000 or more, and
3. Mass. residents employed in connection with Mass. film production

Credit equals:

- 10% of aggregate Mass. resident payroll⁶ if Mass. production-related expenses \$25,000 - \$1 million
- 20% of aggregate Mass. resident payroll⁷ if Mass. production-related expenses exceed \$1 million.

Any unused credit can be carried forward for up to 5 yrs.

Note: If the motion picture company is not subject to Mass. Income Tax or Corporate Excise, then credit flows through to taxable corporations, individuals and estates/trusts that are partners/members of the motion picture company.

DOR shall promulgate necessary rules & regulations regarding Sales & Use Tax Exemption and Income Tax/Corporate Excise Credit

DOR may audit reported expenditures used to qualify for Exemption & Credit

State-Owned Property:

Commonwealth may not charge a motion picture company a fee for use of state-owned property in beyond actual cost to Commonwealth, except where demolition or construction projects costing \$1,000,000 are performed.

³ Should define the term "Produce," as it is a term of art with a particular significance in the motion picture industry.

⁴ Motion picture includes: movie, video, TV series and commercial; but does NOT include news programs, talk shows, game shows, sporting events, awards shows/galas, infomercials (?), corporate or institutional videos, any production containing "obscene" material or performances as defined by law.

⁵ Not actually clear that language requires \$250,000 be spent in the Commonwealth or only that the cine be filmed or produced, in whole or in part, in the Commonwealth.

Also, does not appear that \$250,000 need be spent on otherwise taxable items.

⁶ Aggregate Mass. resident payroll does NOT include any single salary \geq \$1, 000,000

⁷ Same as Note 6

COMMITTEE ON REVENUE ~ BILL SUMMARY

Bill Number: H.4252 (Subst. of H.4060[Committee Redraft of H.3823])
Principal Floor Amendments are incorporated herein

Name: AN ACT PROVIDING INCENTIVES TO THE MOTION PICTURE INDUSTRY.

Summary of Proposed Law:

Sales & Use Tax:

Bill seeks to exempt the following from the Sales & Use Tax:

- Purchases made in connection with the filming or production¹ of motion picture(s)² in the Commonwealth by a motion picture production company for which it "intends to expend" at least \$250,000 in the aggregate in the Commonwealth³ in a 12-month period.

Production company must file estimate of expenditures w/ Executive Office of Economic Development prior to start of filming.

All qualifying expenditures must be made through a checking account at a Mass. Bank.

Failure to meet \$250,000 threshold results in liability for all Sales Tax thus waived + interest.

Employment-based Credit against Income Tax/Corporate Excise:

Credit against Mass. Income Tax/Corporate Excise for production company:

1. filming in Mass.
2. with Mass. production costs of \$250,000 or more, and
3. Mass. residents employed in connection with Mass. film production

Credit equals:

- 15% of aggregate Mass. resident payroll⁴ if Mass. production-related expenses \$25,000 - \$10 million
- 20% of aggregate Mass. resident payroll⁵ if Mass. production-related expenses exceed \$10 million.

Any unused credit can be carried forward for up to 5 yrs.

Note: Credits may be transferred (assigned) to taxable corporations, individuals and estates/trusts.

¹ Should define the term "Produce," as it is a term of art with a particular significance in the motion picture industry.

² Motion picture includes: movie, video, TV series and commercial; but does NOT include news programs, talk shows, game shows, sporting events, awards shows/galas, infomercials (?), corporate or institutional videos, any production containing "obscene" material or performances as defined by law.

³ Not actually clear that language requires \$250,000 be spent in the Commonwealth or only that the cine be filmed or produced, in whole or in part, in the Commonwealth.

Also, does not appear that \$250,000 need be spent on otherwise taxable items.

⁴ Aggregate Mass. resident payroll does NOT include any single salary \geq \$1,000,000

⁵ Same as Note 6

DOR shall promulgate necessary rules & regulations regarding Sales Tax Exemption and Income Tax/Corporate Excise Credit

DOR may audit reported expenditures used to qualify for Exemption & Credit

Qualified Film Production Tax Credit

An additional credit for films qualifying for above employment-based credit and either:

- Mass. production expenses exceed 50% of total production expenses, or
- At least 50% of days of "principal photography" occurs in Mass.

Credit is equal to 25% of all Massachusetts production costs.

Credit Limit

Total credits for any one production not to exceed \$7 million per project.

State-Owned Property:

Commonwealth may not charge a motion picture company a fee for use of state-owned property in beyond actual cost to Commonwealth, except where demolition or construction projects costing \$1,000,000 are performed.

Impact Studies & Reports

Mass. Office of Economic Development is required to:

- conduct an economic impact study of motion picture production and development in the Commonwealth and issue a report & any recommendations no by Dec. 31, 2009.
- file an economic report of all motion picture production activity in the Commonwealth that receives a tax credit certificate under the act annually, by Dec. 31 of each year, with the Clerks of the House & Senate, the House and Senate Committees on Ways & Means and with the Joint Committee on Economic Development.

Mass. Department of Revenue is required to issue a report detailing the amount of tax credit certificates issued to taxpayers under the act and shall file the same by Dec. 31 with the Clerks of the House & Senate, the House and Senate Committees on Ways & Means, the Joint Committee on Revenue and with the Joint Committee on Economic Development.

AN ACT PROVIDING INCENTIVES TO THE MOTION PICTURE INDUSTRY.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

“SECTION 1. Section 6 of chapter 62 of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by adding the following subsection:—

(l)(1) As used in this subsection the following words shall, unless the context clearly requires otherwise, have the following meanings:—

“Motion picture”, a feature-length film, video, television series defined as a season not to exceed 27 episodes, or a commercial made in the commonwealth, in whole or in part, for theatrical or television viewing or as a television pilot. The term "motion picture" shall not include a production featuring news, current events, weather and financial market reports, talk show, game show, sporting events, awards show or other gala event, a production whose sole purpose is fundraising, a long-form production that primarily markets a product or service, a production containing obscene material or performances.

“Motion picture production company”, a company including any subsidiaries engaged in the business of producing motion pictures, videos, television series, or commercials intended for a theatrical release or for television viewing. The term “motion picture production company” shall not mean or include any company which is more than 25 per cent owned, affiliated, or controlled, by any company or person which is in default on a loan made by the commonwealth or a loan guaranteed by the commonwealth.

“Massachusetts production expense”, a production expense for the motion picture clearly and demonstrably incurred in the commonwealth.

“Principal photography”, the phase of production during which the motion picture is actually filmed. The term shall not include preproduction or postproduction.

“Production expense” or “production cost”, preproduction, production and postproduction expenditures directly incurred in the production of a motion picture. Said term includes wages and salaries paid to individuals employed in the production of the motion picture; the costs of set construction and operation, editing and related services, photography, sound synchronization, lighting, wardrobe, make-up and accessories; film processing, transfer, sound mixing, special and visual effects; music; location fees and the cost of purchase or rental of facilities and equipment or any other production expense as may be determined by the department of revenue to be an eligible production expense. The term shall not include costs incurred in marketing or advertising a motion picture, any costs related to the transfer of tax credits or any amounts paid to persons or businesses as a result of their participation in profits from the exploitation of the production.

“Secretary”, the secretary of economic development.

(2) A taxpayer engaged in the making of a motion picture shall be allowed a credit against the taxes imposed by this chapter for the employment of persons within the commonwealth in connection with the filming or production of 1 or more motion pictures in the commonwealth within any consecutive 12 month period. The credit shall be equal to 20 per cent of the total aggregate payroll paid by a motion picture production company that constitutes Massachusetts source income, when total production costs incurred in the commonwealth equal or exceed \$250,000 during the taxable year. For purposes of this

subsection, the term "total aggregate payroll" shall not include the salary of any employee whose salary is equal to or greater than \$1,000,000.

(3) A taxpayer shall be allowed an additional credit against the taxes imposed by this chapter equal to 25 per cent of all Massachusetts production expenses, not including the payroll expenses used to claim a credit pursuant to paragraph (2), where the motion picture is also eligible for a credit pursuant to paragraph (2) and either Massachusetts production expenses exceed 50 per cent of the total production expenses for a motion picture or at least 50 per cent of the total principal photography days of the film take place in the commonwealth.

(4) The tax credit shall be taken against the taxes imposed under this chapter and shall not be refundable. Any amount of the tax credit that exceeds the tax due for a taxable year may be carried forward by the taxpayer to any of the 5 subsequent taxable years.

(5)(i) All or any portion of tax credits issued in accordance with this subsection may be transferred, sold or assigned to other film taxpayers with tax liabilities under this chapter or chapter 63. Any tax credit that is transferred, sold or assigned and taken against taxes imposed by this chapter or said chapter 63 shall not be refundable. Any amount of the tax credit that exceeds the tax due for a taxable year may be carried forward by the transferee, buyer or assignee to any of the 5 subsequent taxable years from which a certificate is initially issued by the department of revenue.

(ii) An owner or transferee desiring to make a transfer, sale or assignment shall submit to the commissioner a statement which describes the amount of tax credit for which the transfer, sale or assignment of tax credit is eligible. The owner or transferee shall provide to the commissioner information as the commissioner may require for the proper

allocation of the credit. The commissioner shall provide to the taxpayer a certificate of eligibility to transfer, sell or assign the tax credits. The commissioner shall not issue a certificate to a taxpayer that has an outstanding tax obligation with the commonwealth in connection with any motion picture for any prior taxable year. A tax credit shall not be transferred, sold or assigned without a certificate.

(6) The total amount of tax credits provided under this subsection in connection with any one motion picture production shall not exceed \$7,000,000.

(7) The commissioner, in consultation with the secretary, shall promulgate regulations necessary for the administration of the provisions of this subsection.

SECTION 2. Chapter 63 of the General Laws is hereby amended by inserting after section 38S the following section:—

Section 38T. (a) as used in this section the following words shall, unless the context clearly requires otherwise, have the following meanings:

“Commissioner” the commissioner of revenue.

“Motion picture”, a feature-length film, a video, a television series defined as a season not to exceed 27 episodes, or a commercial made in the commonwealth, in whole or in part, for theatrical or television viewing or as a television pilot. The term “motion picture” shall not include a production featuring news, current events, weather and financial market reports, talk show, game show, sporting events, awards show or other gala event, a production whose sole purpose is fundraising, a long-form production that primarily markets a product or service, a production containing obscene material or performances.

“Motion picture production company”, a company including its subsidiaries engaged in the business of producing motion pictures, videos, television series, or commercials

intended for a theatrical release or for television viewing. The term "motion picture production company" shall not mean or include any company which is more than 25 per cent owned, affiliated, or controlled, by any company or person which is in default on a loan made by the commonwealth or a loan guaranteed by the commonwealth.

"Massachusetts production expense", a production expense for the motion picture clearly and demonstrably incurred in the commonwealth.

"Principal photography", the phase of production during which the motion picture is actually filmed. The term shall not include preproduction or postproduction.

"Production expense" or "production cost", preproduction, production and postproduction expenditures directly incurred in the production of a motion picture. The term shall include wages and salaries paid to individuals employed in the production of the motion picture; the costs of set construction and operation, editing and related services, photography, sound synchronization, lighting, wardrobe, make-up and accessories; film processing, transfer, sound mixing, special and visual effects; music; location fees and the cost of purchase or rental of facilities and equipment or any other production expense as may be determined by the department of revenue to be an eligible production expense. The term shall not include costs incurred in marketing or advertising a motion picture, any costs related to the transfer of tax credits or any amounts paid to persons or businesses as a result of their participation in profits from the exploitation of the production.

"Secretary", the secretary of economic development.

(b) A taxpayer engaged in the making of a motion picture shall be allowed a credit against the taxes imposed by this chapter for the employment of persons within the commonwealth in connection with the filming or production of 1 or more motion pictures in the commonwealth within any consecutive 12 month period. The credit shall be equal to 20 per cent of the total aggregate payroll paid by a motion picture production company that constitutes Massachusetts source income, when total production costs incurred in the commonwealth equal or exceed \$250,000 during the taxable year. For purposes of this subsection, the term "total aggregate payroll" shall not include the salary of any employee whose salary is equal to or greater than \$1,000,000.

(c) A taxpayer shall be allowed an additional credit against the taxes imposed by this chapter equal to 25 per cent of all Massachusetts production expenses, not including the payroll expenses used to claim a credit pursuant to subsection(b), where the motion picture is also eligible for a credit pursuant to subsection (b) and either Massachusetts production expenses exceed 50 per cent of the total production expenses for a motion picture or at least 50 per cent of the total principal photography days of the film take place in the commonwealth.

(d) The tax credit shall be taken against the taxes imposed under this chapter and shall not be refundable. Any amount of the tax credit that exceeds the tax due for a taxable year may be carried forward by the taxpayer to any of the 5 subsequent taxable years.

(e)(1) All or any portion of tax credits issued in accordance with the provisions of this section may be transferred, sold or assigned to other taxpayers with tax liabilities under this chapter or chapter 62. Any tax credit that is transferred, sold or assigned and taken against taxes imposed by this chapter or said chapter 62 shall not be refundable. Any

amount of the tax credit that exceeds the tax due for a taxable year may be carried forward by the transferee, buyer or assignee to any of the 5 subsequent taxable years from which a certificate is initially issued by the department of revenue.

(2) An owner, transferee or assignee desiring to make a transfer, sale or assignment shall submit to the commissioner a statement which describes the amount of tax credit for which the transfer, sale or assignment of tax credit is eligible. The owner, transferee or assignee shall provide to the commissioner such information as the commissioner may require for the proper allocation of the credit. The commissioner shall provide to the taxpayer a certificate of eligibility to transfer, sell or assign the tax credits. The commissioner shall not issue a certificate to a taxpayer that has an outstanding tax obligation with the commonwealth in connection with any motion picture for any prior taxable year. A tax credit shall not be transferred, sold or assigned without a certificate.

(f) The total amount of tax credits provided under this subsection in connection with any one motion picture production shall not exceed \$7,000,000.

(g) The commissioner, in consultation with the secretary, shall promulgate regulations necessary for the administration of this subsection.

SECTION 3. Section 1 of chapter 64H of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by inserting after the definition of "Mobile telecommunications service" the following 2 definitions:—

"Motion picture", a feature-length film, a video, a television series defined as a season not to exceed 27 episodes, or a commercial made in the commonwealth, in whole or in part, for theatrical or television viewing or as a television pilot. The term "motion picture" shall not include a production featuring news, current events, weather and financial

market reports, talk show, game show, sporting events, awards show or other gala event, a production whose sole purpose is fundraising, a long-form production that primarily markets a product or service, or a production containing obscene material or performances.

"Motion picture production company", a company including any subsidiaries engaged in the business of producing motion pictures, videos, television series, or commercials intended for a theatrical release or for television viewing. The term "motion picture production company" shall not mean or include any company which is more than 25 per cent owned, affiliated, or controlled, by any company or person which is in default on a loan made by the commonwealth or a loan guaranteed by the commonwealth.

SECTION 4. Section 6 of said chapter 64H, as so appearing, is hereby amended by adding the following paragraph:—

(ww) Sales of tangible personal property to a qualifying motion picture production company or to an accredited film school student for the production expenses related to a school film project.

For the purposes of this paragraph a qualifying motion picture production company must expend in the aggregate not less than \$250,000 within the commonwealth in connection with the filming or production of one or more motion pictures in the commonwealth within any consecutive 12 period and have the approval of the secretary of economic development and the commissioner.

Any motion picture production company that intends to film all, or parts of, a motion picture or television program in the commonwealth and qualify for the exemption provided by this paragraph shall provide an estimate of total expenditures to be made in

the commonwealth in connection with the filming or production of such motion picture or television program and shall designate a member or representative of the motion picture production company as a primary liaison with the commissioner for the purpose of facilitating the proper reporting of expenditures and other information as required by the commissioner. Said estimate of expenditures shall be filed prior to the commencement of filming in the commonwealth. Any qualifying motion picture production company that has been approved which fails to expend \$250,000 within a consecutive 12 month period shall be liable for the sales taxes that would have been paid had the approval not been granted. The sales taxes shall be considered due as of the date that taxable expenditures were made.

The commissioner shall promulgate rules for the implementation of this paragraph.

SECTION 5. Notwithstanding any general or special law to the contrary, upon application by a motion picture production company, the secretary of economic development shall make a determination regarding the inclusion of the name "Commonwealth of Massachusetts" in the credits of any motion picture filmed or produced in the commonwealth.

SECTION 6. Notwithstanding any general or special law to the contrary, except for extraordinary activities, a department or agency of the commonwealth shall not charge a fee or other cost, except the actual costs incurred by the affected department or agency, for the use of state-owned property for the purposes of making motion pictures. For the purposes of this section, the term "extraordinary" shall mean an activity outside the

normal course of business of an agency or department of the commonwealth, including, but not limited to, demolition or construction projects, or any combination thereof.

SECTION 7. Notwithstanding any general or special law to the contrary, the secretary of economic development shall conduct an economic impact study of motion picture production and development in the commonwealth and shall issue a report together with any recommendations no later than December 31, 2011; provided, however, that the secretary shall file annually by December 31 an economic report of all motion picture production activity in the commonwealth that receives a tax credit certificate pursuant to this act. The secretary shall file annually said report by December 31, with the clerk of the senate and house of representatives, the house and senate committees on ways and means and with the joint committee on economic development and emerging technologies.

SECTION 8. The department of revenue shall issue a report detailing the amount of tax credit certificates issued to taxpayers pursuant to this act, the cost to the commonwealth of the tax credits, and the number of jobs created in Massachusetts as a result of this act and shall file the report by December 31, 2011 with the clerk of the senate and the house of representatives, the house and senate committees on ways and means, the joint committee on revenue and the joint committee on economic development and emerging technologies. The department shall create the forms necessary to comply with the reporting requirements of this section.

SECTION 9. This act shall be effective for tax years beginning on or after January 1, 2006 and before January 1, 2013, but credits allowed pursuant to this act may be carried forward pursuant to sections 1 and 2 after January 1, 2013.”

COMMITTEE ON REVENUE ~ BILL SUMMARY

Bill Number: H.4252 / S. 2187 Conference Committee Report

Name: AN ACT PROVIDING INCENTIVES TO THE MOTION PICTURE INDUSTRY.

Summary of Proposed Law:

Sales & Use Tax:

Bill seeks to exempt the following from the *Sales & Use Tax*:

- Purchases made in connection with the filming or production of motion picture(s) in the Commonwealth by a motion picture production company for which it "intends to expend" at least \$250,000 in the aggregate in the Commonwealth in a 12-month period and/or to film students in an accredited program for purchases in connection a school-related film production.

Production company must file estimate of expenditures w/ Executive Office of Economic Development prior to start of filming.

Failure to meet \$250,000 threshold results in liability for all Sales Tax thus waived + interest.

Employment-based Credit against Income Tax/Corporate Excise:

Credit against Mass. Income Tax/Corporate Excise for production company:

1. filming in Massachusetts.
2. Massachusetts employees hired in connection with the Massachusetts film production

Credit equals 20% of aggregate Massachusetts source income; Salaries of \$1million or more are not eligible for the credit.

Any unused credit can be carried forward for up to 5 yrs.

Note: If the motion picture company is not subject to Mass. Income Tax or Corporate Excise, then the credit may be transferred to taxable corporations, individuals and estates/trusts.

DOR shall promulgate necessary rules & regulations regarding Sales Tax Exemption and Income Tax/Corporate Excise Credit

DOR may audit reported expenditures used to qualify for Exemption & Credit

Qualified Film Production Tax Credit

An additional credit for films with at least 50 percent of the total production costs occur in Massachusetts if at least \$250,000. Credit is equal to 25 percent of the Massachusetts qualified production costs, not to exceed \$7 million per project.

Any unused credit can be carried forward for up to 5 yrs.

Note: If the motion picture company is not subject to Mass. Income Tax or Corporate Excise, then the credit may be transferred to taxable corporations, individuals and estates/trusts.

DOR shall promulgate necessary rules & regulations regarding Sales Tax Exemption and Income Tax/Corporate Excise Credit

DOR may audit reported expenditures used to qualify for Exemption & Credit

State-Owned Property:

Commonwealth may not charge a motion picture company a fee for use of state-owned property in beyond actual cost to Commonwealth, except where demolition or construction projects costing \$1,000,000 are performed.

Reporting Requirements

The Massachusetts Office of Business Development shall issue a report detailing the economic impact of motion picture production and development in the Commonwealth by December 31, 2011.

The Department of Revenue shall issue a report detailing the foregone sales taxes, the amount of qualifying credits, the amount of credits used, the amount of credits transferred and the number of jobs created as a result of this act by December 31, 2011.

Sunset Provision

The sales tax exemption and the employment and production credits created by this act shall expire for tax years beginning on or after January 1, 2013 (after 7 years). All unused credits granted prior to January 1, 2013 may still be carried over for the 5-year period from which they were earned.

H. 4252
(Engrossed by the House)

Senate Version

**Conference Committee
Draft**

| <u>Sales & Use Tax:</u> | <u>Sales & Use Tax:</u> | <u>Sales & Use Tax:</u> |
|---|--|--|
| <p>Bill seeks to exempt the following from the <i>Sales & Use Tax</i>:</p> <ul style="list-style-type: none"> • Purchases made in connection with the filming or production of motion picture(s)¹ in the Commonwealth by a motion picture production company for which it “intends to expend” at least \$250,000 in the aggregate in the Commonwealth in a 12-month period. <p>Production company must file estimate of expenditures w/ Executive Office of Economic Development prior to start of filming.</p> <p>All qualifying expenditures must be made through a checking account at a Mass. Bank.</p> <p>Failure to meet \$250,000 threshold results in liability for all Sales Tax thus waived + interest.</p> | <p>Amendment seeks to exempt from the <i>Sales & Use Tax</i> “all supplies, technical equipment and machinery used in conjunction with the production of a motion picture” including, but not limited to:</p> <ul style="list-style-type: none"> • cameras and camera accessories; • film stock; • lights and lighting control systems; • sound equipment; grip equipment; • video assist systems; • fog machines; • wind machines; generators used to operate exempt equipment; • dollies and cranes used to support exempt equipment; • terminating boxes and extension cables used with exempt equipment; • time code equipment; • VTR editing equipment; • switches; and • character generators. <p>Unlike the House bill, there is no \$250,000 threshold.</p> | <p>Amend House language to allow student projects with an accredited film school.</p> <p>Senate of</p> |

¹ Motion picture includes: movie, video, TV series and commercial; but does NOT include news programs, talk shows, game shows, sporting events, awards shows/galas, infomercials (?), corporate or institutional videos, any production containing “obscene” material or performances as defined by law.

**Employment-based Credit
against Income
Tax/Corporate Excise:**

Credit against Mass. Income Tax/Corporate Excise for production company:

1. filming in Mass.
2. with Mass. production costs of \$250,000 or more, and
3. Mass. residents employed in connection with Mass. film production

Credit equals:

- 15% of aggregate Mass. resident payroll² if Mass. production-related expenses \$25,000 - \$10 million
- 20% of aggregate Mass. resident payroll³ if Mass. production-related expenses exceed \$10 million.

Any unused credit can be carried forward for up to 5 yrs.

Note: Credits may be transferred (assigned) to taxable corporations, individuals and estates/trusts.

DOR shall promulgate necessary rules & regulations regarding Sales Tax Exemption and Income Tax/Corporate Excise Credit

DOR may audit reported expenditures used to qualify

² Aggregate Mass resident payroll does NOT include any single salary \geq \$1,000,000

³ Same as Note 6

**Employment-based Credit
against Income
Tax/Corporate Excise:**

This amendment does not contain a specific employment-based credit, but like the House bill, the amount spent on payroll is factored into the qualified film production tax credit below.

**Employment-based Credit
against Income
Tax/Corporate Excise:**

Allow the house employment credit but not allow employee credit expenses to qualify for both production expenses and employment credits both.

Keep MA resident language and let companies challenge the law (see Louisiana credit for residents only)

Senate – make 20 % for all , but no stacking on production credit; constitutional language on non-residents

| <u>Qualified Film Production Tax Credit</u> | <u>Qualified Film Production Tax Credit</u> | <u>Qualified Film Production Tax Credit</u> |
|---|---|--|
| <p>An additional credit for films qualifying for above employment-based credit and either:</p> <ul style="list-style-type: none"> • Mass. production expenses exceed 50% of total production expenses, or • At least 50% of days of "principal photography" occur in Mass. <p>Credit is equal to 25% of all Massachusetts production costs.</p> | <p>An taxpayer may qualify for the film production expenses credit if:</p> <ul style="list-style-type: none"> • At least 50% of the total production expenses are incurred in Massachusetts, or • At least 50% of the total "principal photography" days of the film take place in Mass. • This credit equals: 15% if the production costs incurred in Mass. are less than \$5 million; • 20% if the production costs incurred in Mass. are between \$5 million and \$10 million; • 25% if the production costs incurred in Mass. Equal or exceed \$10 million. <p>Like the House bill, any unused credit can be carried forward for up to 5 yrs and credits may be transferred or sold.</p> | <p>Keep simpler House language</p> <p><i>Senate ok if exckude employment of those over \$1 million</i></p> |
| <p><u>Credit Limit</u> Total credits for any one production not to exceed \$7 million per project.</p> | <p><u>Credit Limit</u> Total credits for any one production not to exceed \$10 million per project.</p> | <p><u>Credit Limit</u> \$7 million cap</p> <p><i>Senate concedes (insists on \$7m)</i></p> |

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| <p><u>State-Owned Property:</u></p> <p>Commonwealth may not charge a motion picture company a fee for use of state-owned property in beyond actual cost to Commonwealth, except where demolition or construction projects costing \$1,000,000 are performed.</p> | <p><u>State-Owned Property:</u></p> <p>Unlike the House bill, there are no provisions regarding fees for the use of state-owned property.</p> | <p><u>State-Owned Property:</u></p> <p>House Language</p> <p><i>Senate recesses</i></p> |
| <p><u>Impact Studies & Reports</u></p> <p>Mass. Office of Economic Development is required to:</p> <ul style="list-style-type: none"> • conduct an economic impact study of motion picture production and development in the Commonwealth and issue a report & any recommendations no by Dec. 31, 2009. • file an economic report of all motion picture production activity in the Commonwealth that receives a tax credit certificate under the act annually, by Dec. 31 of each year, with the Clerks of the House & Senate, the House and Senate Committees on Ways & Means and with the Joint Committee on Economic Development. <p>Mass. Department of Revenue is required to issue a report detailing the amount of tax credit certificates issued to taxpayers under the act and shall file the same by Dec. 31 with the Clerks of the House</p> | <p><u>Impact Studies & Reports</u></p> <p>Unlike the House bill, there are no studies or reporting requirements on the fiscal impact of this credit.</p> | <p><u>Impact Studies & Reports</u></p> <p>Keep reporting requirements</p> <p><i>Senate recesses</i></p> |

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|--|---|---|
| <p>& Senate, the House and Senate Committees on Ways & Means, the Joint Committee on Revenue and with the Joint Committee on Economic Development.</p> | | |
| <p><u>Hotel Tax</u></p> <p>NONE</p> | <p><u>Hotel Tax</u></p> <p>This amendment contains a provision that exempts employees of motion picture production companies from paying the hotel tax if they:</p> <ul style="list-style-type: none"> • Occupy the room for 20 or more consecutive days, and • Demonstrate that they are working on the production of a motion picture that qualifies for the qualified production credit above. | <p><u>Hotel Tax</u></p> <p><u>None</u></p> <p><i>Senate Recedes</i></p> |
| <p><u>Effective Date</u></p> <p><u>Sunset Clause</u></p> | <p><u>Effective Date</u></p> <p><u>Sunset Clause</u></p> | <p><u>Effective Date</u></p> <p>1/1/06</p> <p><u>Sunset Clause</u></p> <p><u>None.</u></p> <p><i>Senate wants 6 years</i></p> |

Attached is a draft Technical Information Release for public and practitioner comment that announces the enactment of new personal income tax and corporate excise credits and sales tax exemptions that provide incentives to the motion picture industry effective for taxable years beginning on or after January 1, 2006 and before January 1, 2013. The total amount of tax credits allowed to any one motion picture shall not exceed \$7,000,000. The sales tax exemption applies to qualifying motion picture production companies and qualifying film students.

Please e-mail comments by March 22, 2006 to the following address:
rulesandregs@dor.state.ma.us

WORKING DRAFT FOR PRACTITIONER COMMENTS - 3/7/06

Corporate Excise, Personal Income Tax and Sales Tax Technical Information Release 06-XX An Act Providing Incentives To The Motion Picture Industry

The Massachusetts Legislature recently enacted personal income tax and corporate excise credits and sales tax exemptions that provide incentives to the motion picture industry (the "Act"). See St. 2005, c. 158; amended by St. 2005, c. 167. In particular, these credits and exemptions apply to a qualifying motion picture production company and the sales tax exemption also applies to a qualifying film school student. This Technical Information Release provides an explanation of the Act's requirements and effective dates.

1. Personal Income Tax and Corporate Excise Credits

For taxable years beginning on or after January 1, 2006 and before January 1, 2013, the Act provides two tax credits that can be taken by a motion picture production company (the "taxpayer") against either its personal income tax or corporate excise liabilities. M.G.L. c. 62, § 6(1) and c.

63, § 38T. Each credit has its own qualification requirements and a taxpayer is allowed to qualify for and claim both credits; however, the total amount of tax credits allowed to any one motion picture shall not exceed \$7,000,000.

A. Payroll Credit

A taxpayer is allowed a credit for the employment of persons within the Commonwealth in connection with the filming and production of a motion picture as explained below. The credit is equal to 20 per cent of the total qualifying aggregate payroll of the motion picture. Only actual payments to employees may be used to determine the qualifying aggregate payroll, and only in the instance in which the payment constitutes Massachusetts source income to the recipient. Qualifying aggregate payroll may also include fringe benefits to employees to the extent such benefits constitute Massachusetts source income. For example, the qualified transportation fringe benefit of employer-provided parking may be included in the qualifying aggregate payroll to the extent it is included in Massachusetts source income to the recipient. The qualifying aggregate payroll shall not include any payments made to an employee when the total payments made to, or to be made to, such employee in connection with the motion picture are equal to or greater

than \$1,000,000 ("High Salary Employee"). Such High Salary Employee's entire salary, not just the amount equal to or greater than \$1,000,000, is excluded from the payroll credit.

To qualify for the payroll credit the taxpayer must incur in the Commonwealth total production expenses of at least \$250,000 in a consecutive twelve month period ("the \$250K qualification period"). If the taxpayer engages in the making of more than one motion picture in the Commonwealth, the \$250K qualification period must be met for each motion picture. If the taxpayer seeks to assert a \$250K qualification period in connection with two or more motion pictures, the common expenses between the motion pictures, if any, must be reasonably apportioned between the motion pictures. A taxpayer must claim the entire payroll credit for qualifying aggregate payroll paid on its tax return for the tax year that includes the final month of the \$250K qualification period. This is so even if the \$250K qualification period commenced in the preceding tax year.

Only aggregate payroll paid by the taxpayer during the \$250K qualification period will qualify for the payroll credit. The \$250K qualification period serves as the "determination" period in that the taxpayer must incur in the Commonwealth at least \$250,000 of total production expenses during the consecutive twelve month period to be eligible for the payroll credit.

Also, this same period serves as the "qualification" period in that only qualified aggregate payroll expenses paid during this determination period qualify for the payroll credit. In some cases, the taxpayer may be able to choose between one or more possible \$250K qualification periods. However, only one \$250K qualification period is allowed for each motion picture and only the aggregate payroll expense incurred within the chosen period qualifies for the payroll credit. In addition, as noted below, the \$250K qualification period is the same for the payroll credit, the production expense credit and the sales tax exemption. Consequently, the choice of the \$250K qualification period may have a bearing on the application of the production expense credit and the sales tax exemption, as further discussed below.

Example 1: A taxpayer that is taxed on a calendar year basis engages in the making of a motion picture in the Commonwealth and incurs \$150,000 of total production expenses in the Commonwealth in December, 2006 of which \$50,000 constitutes qualifying aggregate payroll. In January, 2007 the taxpayer incurs an additional \$200,000 of total production expenses in the Commonwealth of which \$75,000 constitutes qualifying aggregate payroll.

Because the taxpayer has incurred at least \$250,000 of total production expenses in the Commonwealth within a consecutive twelve month period, it may now qualify for the payroll credit for the \$50,000 of qualifying aggregate payroll paid in 2006 and for the \$75,000 of qualifying aggregate payroll paid in 2007. The entire payroll credit (20% X \$125,000) may be taken by the taxpayer on its tax return filed for its 2007 tax year.

Example 2: Same facts as in example 1 above, however the taxpayer continues to engage in the making of the same motion picture in 2007 and incurs \$20,000 of aggregate payroll in each month for February through December, 2007. The taxpayer has incurred aggregate payroll expenses for a period of thirteen months and has the option to choose

one of two consecutive twelve month periods as its \$250K qualification period. Under the facts of this example, by choosing December, 2006 through November, 2007 as the \$250K qualification period, the taxpayer will be able to claim \$50,000 of qualifying aggregate payroll paid in 2006 and \$275,000 of qualifying aggregate payroll paid in 2007. The entire payroll credit (20% X \$325,000) may be taken by the taxpayer on its tax return filed for its 2007 tax year.

B. Production Expense Credit

A taxpayer is allowed to claim a credit equal to 25 per cent of its Massachusetts production expenses, not including the qualifying aggregate payroll expenses included in the calculation of the taxpayer's payroll credit, so long as such taxpayer is eligible to claim the payroll credit in connection with the same motion picture. To qualify for the 25% production credit, the taxpayer's Massachusetts production expenses must exceed 50 per cent of its total production expenses incurred in connection with the motion picture or, alternatively, at least 50 per cent of the taxpayer's total principal photography days spent filming the motion picture must take place in the Commonwealth.

When a taxpayer makes salary payments to a High Salary Employee that would otherwise constitute qualifying aggregate payroll but for the fact that the employee is a High Salary Employee, those payments may be included in the calculation of the production expense credit. The entire salary paid to a High Salary Employee that is equal to or greater than \$1,000,000 may be used to calculate the production expense credit including the portion of such salary that is less than \$1,000,000 (provided that such entire salary is excluded from the payroll credit, for which it does not qualify).

Example: A taxpayer that is taxed on a calendar year basis engages in the making of a motion picture in the Commonwealth and incurs \$75,000 of total production expenses in the Commonwealth in the three months, December, 2006 through February, 2007 (\$25,000 each month), of which \$30,000 constitutes qualifying aggregate payroll (\$10,000 each month). Also, during the nine months, March, 2007 through December, 2007, the taxpayer incurs an additional \$200,000 of total production expenses in the Commonwealth (\$20,000 each month) of which \$100,000 constitutes qualifying aggregate payroll (\$10,000 each month). It is presumed for purposes of this example, that the taxpayer's Massachusetts expenses exceed 50 per cent of its total production expenses incurred in connection with the motion picture or that alternatively at least 50 per cent of the taxpayer's principal photography days spent filming take place in Massachusetts.

The taxpayer is able to claim that it has incurred at least \$250,000 of total production expenses in the Commonwealth during two distinct, consecutive twelve month periods. First, it may claim that it incurred \$255,000 in production expenses during the twelve month period, December, 2006 through November, 2007, of which \$120,000 constitutes qualifying aggregate payroll. Second, it may claim that it incurred \$250,000 of production expenses during the twelve month period, January, 2007

through December, 2007, of which \$120,000 constitutes qualifying aggregate payroll.

The taxpayer is eligible for the payroll credit for either of these two periods, as is required for purposes of the production expense credit.

The taxpayer chooses the twelve month period, December, 2006 through November, 2007, as its \$250K qualification period. For this period, the taxpayer will have a production expense credit of \$33,750 (25% X \$135,000) and a payroll credit of \$24,000 (20% X \$120,000) for a total tax credit benefit of \$57,750. Note that if the presumption stated above concerning the relationship between the taxpayer's in-state expenditures/activities to its total expenditures/activities is not met, the taxpayer would not be entitled to the production expense credit, but would still be entitled to said payroll credit.

2. Sales Tax Exemptions

For taxable years beginning on or after January 1, 2006 and before January 1, 2013, the Act provides sales tax exemptions that can be asserted by a qualifying motion picture production company or a qualifying film school student. M.G.L. c. 64H, § 6(w). Production expenses that qualify for the sales tax exemption under the Act may also qualify for the production expense credit.

A. Motion Picture Production Company Sales Tax Exemption

A sales tax exemption is allowed to a taxpayer for production costs incurred in the Commonwealth. In order to qualify for the sales tax exemption, a taxpayer must incur at least \$250,000 in total production costs in the Commonwealth during a consecutive twelve month period and must be conditionally pre-approved as a qualifying company by the Secretary and the Commissioner. The twelve month period that a taxpayer may use for purposes of the sales tax exemption is the same \$250K qualification period that applies for purposes of the payroll and production expense credits, discussed above. The taxpayer must file an estimate of expenditures to be made in the Commonwealth in connection with the production of the motion picture prior to the commencement of the filming in the Commonwealth, and shall designate a representative as a primary liaison with the Commissioner for the purpose of facilitating the proper reporting of expenditures and other information as required by the Commissioner.

The taxpayer must file the Online Pre-File Estimate Film Incentive Form ("estimate form") to receive conditional pre-approval by the Secretary and the Commissioner and thereafter may utilize the sales tax exemption for production costs incurred in the Commonwealth by giving its vendors an exempt use certificate. Such pre-approval is subject to final review and acceptance upon receipt of the required subsequent Post-File Accounting (see section 3A, *infra*, for details on the Post-File Accounting). If the taxpayer commences filming in the Commonwealth and subsequently files the estimate form, only in-state purchases made subsequent to the conditional pre-approval of the form will qualify for the sales tax exemption.

Any taxpayer that has been conditionally approved for the sales tax exemption that then fails to expend the requisite \$250,000 within a

consecutive twelve month period or that fails to file either the estimate form or the Online Post-File Accounting Film Incentive Form shall be liable for the sales taxes that would have been due had the conditional approval not been initially granted. The sales taxes shall be considered due as of the date that the taxable expenditures were made.

Only production expenses constituting tangible personal property purchased during the \$250K qualification period will qualify for the sales tax exemption.

Example: A taxpayer that is taxed on a calendar year basis files the estimate form on May 1, 2006, resulting in its pre-approval as a qualified motion picture company, then commences filming a motion picture on this same date. The taxpayer purchases \$40,000 of production expenses constituting tangible personal property between May 1, 2006 and June 30, 2006 and claims the sales tax exemption by presenting an exempt use certificate to each vendor.

Also, during this same two month period the taxpayer incurs \$100,000 of qualifying aggregate payroll and an additional \$110,000 of qualifying production expenses that are not qualifying aggregate payroll. The taxpayer claims as its \$250K qualification period, the twelve month period May, 2006 through April, 2007, during which time it has exactly \$250,000 in qualifying production expenses. In addition to its sales tax exemptions, the taxpayer is entitled to claim the payroll credit on its income tax return filed for its 2007 tax year. Also, assuming that the taxpayer's Massachusetts expenses exceed 50 per cent of its total production expenses incurred in connection with the motion picture or that alternatively at least 50 per cent of its principal photography days are spent filming in Massachusetts, the taxpayer is entitled to claim the production expense credit on its 2007 income tax return.

Note that if the taxpayer fails to reach the \$250,000 threshold, it is not entitled to either the payroll or production expense credit. Also, in the latter event, the taxpayer would become liable for the sales taxes that would have been due had its conditional pre-approval not been initially granted. The latter sales taxes would be considered due as of the date that the taxable purchases were made.

B. Film School Student Sales Tax Exemption

Accredited film school students are allowed a sales tax exemption for production expenses incurred in the Commonwealth related to a school film project. Such students may utilize the sales tax exemption for production expenses incurred in the Commonwealth by giving its vendors an exempt use certificate.

3. Other Requirements

A. Post-File Accounting

In order to qualify for the sales tax exemption, payroll credit or the production expense credit the taxpayer must file the Online Post-File Accounting Film Incentive Form. This form must be filed subsequent to the \$250K qualification period and at the time the taxpayer's income

tax return is due for the tax year that includes the final month the \$250K qualification period. A taxpayer that does not file the Online Post-File Accounting Film Incentive Form or that does not incur at least \$250,000 in total production costs in the Commonwealth during the \$250K qualification period, shall not be entitled to the payroll or production expense credit and shall be liable for any sales taxes that would have been due during such period.

B. Withholding, Payments, and Profits: Payroll & Production Expense Credits

A taxpayer must be registered for withholding of Massachusetts personal income tax and must withhold from its payroll expenses in order for the payments to qualify as an aggregate payroll expense for purposes of the payroll credit or to qualify as a Massachusetts production expense for purposes of the production expense credit. The Commissioner will require withholding whether or not the amounts paid are to "employees" or constitute "wages" as defined in M.G.L. c. 62B, § 1. The salary paid must be Massachusetts source income to the recipient, and further, must not be a payment representing the employee's participation in profits from the motion picture in order to qualify as part of the aggregate payroll expense for purposes of the payroll credit or to qualify as a Massachusetts production expense for purposes of the production expense credit.

C. Transfer, Sale or Assignment of Credits

A taxpayer subject to the personal income tax under chapter 62 or the corporate excise under chapter 63 may transfer, sell or assign either the payroll or production expense credit to one or more other taxpayers that are subject to the personal income tax under chapter 62 or taxpayers subject to the corporate excise under chapter 63.

Any taxpayer, including a transferee, buyer or assignee, desiring to make a sale, transfer or assignment of the credits (the "transferor") shall obtain a certificate of eligibility to transfer, sell or assign the credits. The transferor must submit to the Commissioner a statement in the form prescribed by the Commissioner that details the amount of tax credit being sold, transferred or assigned and any other information required by the Commissioner. A tax credit shall not be transferred, sold or assigned without a certificate of eligibility issued by the Commissioner.

If the transferor is the motion picture production company that initially qualifies for the credits, then the credits must first be taken on the transferor's Massachusetts tax return before the taxpayer can request a certificate of eligibility to transfer any remaining portion of the credits. Transferors that have an outstanding tax obligation with the Commonwealth in connection with any motion picture for any prior taxable year are not eligible for certificates of eligibility to transfer, sell or assign the credits.

D. Refundability and Carryover of Credits

The payroll and production expense credits are nonrefundable. The credits may reduce the corporate minimum excise. Any amount of the credits that exceeds the tax due for the taxable year may be carried

forward by the taxpayer to any of the five subsequent taxable years. Transferees, buyers or assignees may use and carry forward the credits to any of the five subsequent taxable years subsequent to the first taxable year the credits were allowed to the initial transferor. Transferring, selling or assigning a credit does not extend the five year carry forward period.

E. Loan Default

A taxpayer (including an owner, parent or affiliate of the taxpayer) is not eligible for the payroll or production expense credit or the sales tax exemption if it is in default on a loan made by the Commonwealth or a loan guaranteed by the Commonwealth.

4. Definitions

"Commissioner", the Commissioner of Revenue.

"Motion picture", a feature-length film, a video, a television series defined as a season not to exceed 27 episodes, or a commercial made in the Commonwealth, in whole or in part, for theatrical or television viewing or as a television pilot. The term "motion picture" shall not include a production featuring news, current events, weather and financial market reports, a talk show, a game show, sporting events, an awards show or other gala event, a production whose sole purpose is fundraising, a long-form production that primarily markets a product or service, a production containing obscene material or performances, a production used for corporate training or in-house corporate advertising, or other similar-type productions.

"Motion picture production company", a company including its subsidiaries engaged in the business of producing motion pictures. The term "motion picture production company" shall not mean or include any company or person which is in default on a loan made by the commonwealth or a loan guaranteed by the commonwealth.

"Massachusetts production expense", a production expense for the motion picture clearly and demonstrably incurred in the commonwealth.

"Parent, owner or affiliate", any person or entity that more than 25 per cent owns, controls or is affiliated with the taxpayer.

"Principal photography days", the phase of production during which the motion picture is actually filmed. The term shall not include preproduction or postproduction.

"Production expense" or "production cost", preproduction, production and postproduction expenditures directly incurred in the production of a motion picture. The term shall include wages and salaries paid to individuals employed in the production of the motion picture; the costs of set construction and operation, editing and related services, photography, sound synchronization, lighting, wardrobe, makeup and accessories; film processing, transfer, sound mixing, special and visual effects; music; location fees and the cost of purchase or rental of facilities and equipment or any other production expense. The term shall not include costs incurred in the marketing or advertising of a

motion picture, any costs related to the transfer of tax credits or any amounts paid to persons or businesses as a result of their participation in profits from the exploitation of the production.

"Secretary", the Secretary of Economic Development.

5. Miscellaneous Provisions

The Act provides that upon application by a motion picture company, the Secretary shall make a determination regarding the inclusion of the name "Commonwealth of Massachusetts" in the credits of any picture filmed or produced in the Commonwealth.

The Act further provides that a department or agency of the Commonwealth shall not charge a fee or other cost, except a charge for extraordinary activities or a charge for costs actually incurred by the affected department or agency for the use of state-owned property for the purpose of

making a motion picture. An extraordinary activity shall mean an activity

outside the normal course of business of an agency or department including, but not limited to, demolition or construction projects.

WORKING DRAFT FOR PRACTITIONER COMMENTS - 3/7/06

209585/jmw

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2. Enter your email address in the form field, select "Cancel subscription" and click "Submit".

July 27, 2006

Alan LeBovidge, Commissioner
Massachusetts Department of Revenue
100 Cambridge Street
Boston, Massachusetts

Dear Commissioner:

I write to clarify the legislative intent behind the recent motion picture industry tax credit legislation that your office oversees because recent correspondence with my office suggests that the credit may not be utilized as it the Legislature intended.

This issue arises about some inquiries around the use of so-called "loan-out" companies who act as subsidiaries for performance artists. Until recently a film company would make a payment on behalf of a performance artist to a loan out company, deduct the proper withholding and remit that to the DOR and have the payment count as a Massachusetts payroll expense.

In the meantime, one loan-out company approached the DOR saying the whole payment it received was not just salary and should be subject to a lower withholding amount. DOR agreed but went further to say that it would also reduce the amount of the creditable payroll expenses to the film company. This has caused great consternation on the part of the film company as it has no knowledge or control over how much the credit is actually worth until much later.

Obviously, I would agree that if only a portion of the payment is for salary then only that portion should be considered as a payroll expense. What troubles me, however, is the assertion that the DOR would also consider the payment to the loan-out company as a qualified movie production expense to the extent that it constituted payroll. In my mind the whole payment should be considered an expense if it is for the purpose of engaging a performance artist for shooting in Massachusetts.

Obviously, this matter has raised great uncertainty in the industry and has called into question at least one movie that was slated to be shot in Massachusetts. I would ask that you have your legal team review their regulations on this issue in a timely fashion. I

understand that this a rather urgent matter for one of the companies involved and a delay in resolution of this issue may result in a film being shot someplace other than Massachusetts.

I would be happy to meet with you as soon as possible, other members of the Governor's economic development team, and industry officials to better understand this issue and answer any questions about the legislative intent when we passed the bill.

Sincerely,

John J. Binienda
House Chairman, Joint Committee on Revenue

H.4252 – S. 2187, AN ACT PROVIDING INCENTIVES TO THE MOTION PICTURE INDUSTRY.

Like to thank my fellow House conferees : Tom O'Brien of Kingston and Daniel Webster of Hanson

This bill will make Massachusetts a competitive place to film motion pictures.

Now joining the growing number of states that offer incentives so that the industry will come here instead of Pittsburgh where the architecture is similar.

Specific incentives include:

Sales & Use Tax:

- Purchases made in connection with the filming or production of motion picture(s) in the Commonwealth by a motion picture production company for which it "intends to expend" at least \$250,000 in the aggregate in the Commonwealth in a 12-month period and/or to film students in an accredited program for purchases in connection a school-related film production.
- Failure to meet \$250,000 threshold results in liability for all Sales Tax thus waived + interest.

Employment-based Credit against Income Tax/Corporate Excise:

Credit against Mass. Income Tax/Corporate Excise for production company:

1. filming in Massachusetts..
2. Massachusetts employees hired in connection with the Massachusetts film production

Credit equals 20% of aggregate Massachusetts source income for salaries of less than \$1 million.

Qualified Film Production Tax Credit

- An additional credit for films if at least 50 percent of the total production costs or 50 percent of the principal photography days occur in Massachusetts.
- Credit is equal to 25 percent of the Massachusetts qualified production costs, not to exceed \$7 million per project.

Both credits may be carried over for 5 years, and are transferable.

State-Owned Property:

Commonwealth may not charge a motion picture company a fee for use of state-owned property in beyond actual cost to Commonwealth, except where demolition or construction projects costing \$1,000,000 are performed.

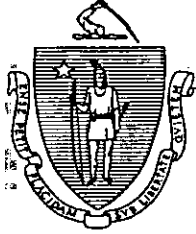
Reporting Requirements

- The Massachusetts Office of Business Development shall issue a report detailing the economic impact of motion picture production and development in the Commonwealth by December 31, 2011.
- The Department of Revenue shall issue a report detailing the foregone sales taxes, the amount of qualifying credits, the amount of credits used, the amount of credits transferred and the number of jobs created as a result of this act by December 31, 2011.

Sunset Provision

The sales tax exemption and the employment and production credits created by this act shall expire for tax years beginning on or after January 1, 2013 (after 7 years). All unused credits granted prior to January 1, 2013 may still be carried over for the 5-year period from which they were earned.

However, the reports should indicate whether the credits are working or not. If they do work, we have time to repeal the sunset. If they don't work, we won't.



The Commonwealth of Massachusetts
Joint Committee on Revenue

REP. JOHN J. BINIENDA
HOUSE CHAIR
ROOM 34, STATE HOUSE
BOSTON, MA 02133-1054
TEL. (617) 722-2320

SEN. CYNTHIA STONE CREEM
SENATE CHAIR
ROOM 416B, STATE HOUSE
BOSTON, MA 02133-1054
TEL. (617) 722-1639

PUBLIC HEARING
State House, Room A-1
May 10, 2005, 11:00 a.m.

Public Testimony Sign-In Sheet

1. Your name:

PAUL COGGINS

2. Contact information (organization represented or city/town of residence)

49 FAIRVIEW AVENUE: WATERTOWN MA

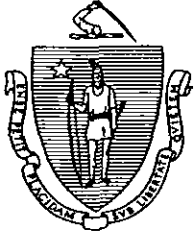
3. Bill or matter on which you are testifying:

O'BRIEN TAX BILL.

SUPPORT [] OPPOSE

Note: You may use the space below to write any additional comments. Attach additional sheets if necessary. If you are submitting pre-prepared written testimony, please indicate below and attach. If you wish to submit written testimony in lieu of an oral presentation, please place an "X" in the box ([X]) below.

[] Please announce and record my written testimony in lieu of an oral presentation.



The Commonwealth of Massachusetts
Joint Committee on Revenue

REP. JOHN J. BINIENDA
HOUSE CHAIR
ROOM 34, STATE HOUSE
BOSTON, MA 02133-1054
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SEN. CYNTHIA STONE CREEM
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BOSTON, MA 02133-1054
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PUBLIC HEARING
State House, Room A-1
May 10, 2005, 11:00 a.m.

Public Testimony Sign-In Sheet

1. Your name:

Thomas Dwan

2. Contact information (organization represented or city/town of residence)

lead H&I TATSE Craftsman 27 years

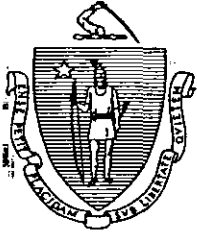
3. Bill or matter on which you are testifying:

O Brian

SUPPORT OPPOSE

Note: You may use the space below to write any additional comments. Attach additional sheets if necessary. If you are submitting pre-prepared written testimony, please indicate below and attach. If you wish to submit written testimony in lieu of an oral presentation, please place an "X" in the box ([X]) below.

Please announce and record my written testimony in lieu of an oral presentation.



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Joint Committee on Revenue

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PUBLIC HEARING
State House, Room A-1
May 10, 2005, 11:00 a.m.

Public Testimony Sign-In Sheet

1. Your name:

Jimmy Cummings & Dorothy Aufiero

2. Contact information (organization represented or city/town of residence)

3 Lincoln St Watertown, MA 02472
Silent Partner Entertainment

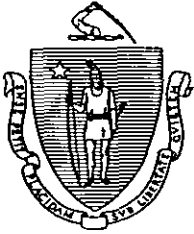
3. Bill or matter on which you are testifying:

O'Brien Bill

SUPPORT OPPOSE

Note: You may use the space below to write any additional comments. Attach additional sheets if necessary. If you are submitting pre-prepared written testimony, please indicate below and attach. If you wish to submit written testimony in lieu of an oral presentation, please place an "X" in the box (X) below.

Please announce and record my written testimony in lieu of an oral presentation.



The Commonwealth of Massachusetts
Joint Committee on Revenue

REP. JOHN J. BINIENDA
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PUBLIC HEARING
State House, Room A-1
May 10, 2005, 11:00 a.m.

Public Testimony Sign-In Sheet

1. Your name:

Representative Thomas J. O'Brien

2. Contact information (organization represented or city/town of residence)

3. Bill or matter on which you are testifying:

H-3823 - Motion Picture Industry

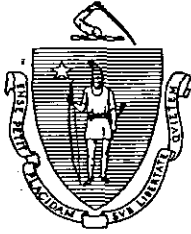
SUPPORT OPPOSE

Note: You may use the space below to write any additional comments. Attach additional sheets if necessary. If you are submitting pre-prepared written testimony, please indicate below and attach. If you wish to submit written testimony in lieu of an oral presentation, please place an "X" in the box ([X]) below.

Please announce and record my written testimony in lieu of an oral presentation.

- 1. Representative Thomas J. O'Brien
- 2. Don Stirling, Massachusetts Sports and Entertainment Commission
- 3. Mary Ann Hughes, Vice President, Film Production Planning, Walt Disney Co
- 4. Sam Weisman, Feature Film Director
- 5. Chris and Marianne Cooper, Actors
- 6. Joe Maiella, President, Massachusetts Production Coalition

PATRIOT



The Commonwealth of Massachusetts
Joint Committee on Revenue

REP. JOHN J. BINIENDA
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SENATE CHAIR
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BOSTON, MA 02133-1054
TEL (617) 722-1639

PUBLIC HEARING
State House, Room A-1
May 10, 2005, 11:00 a.m.

Public Testimony Sign-In Sheet

1. Your name:

Jim MacDonald

2. Contact information (organization represented or city/town of residence)

Dedham, Mass resident (citizen sponsor of bill)

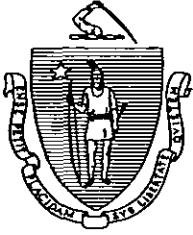
3. Bill or matter on which you are testifying: H 3823

SUPPORT OPPOSE

Note: You may use the space below to write any additional comments. Attach additional sheets if necessary. If you are submitting pre-prepared written testimony, please indicate below and attach. If you wish to submit written testimony in lieu of an oral presentation, please place an "X" in the box ([X]) below.

Please announce and record my written testimony in lieu of an oral presentation.

Local 481



The Commonwealth of Massachusetts
Joint Committee on Revenue

REP. JOHN J. BINIENDA
HOUSE CHAIR
ROOM 34, STATE HOUSE
BOSTON, MA 02133-1054
TEL. (617) 722-2320

SEN. CYNTHIA STONE CREEM
SENATE CHAIR
ROOM 416B, STATE HOUSE
BOSTON, MA 02133-1054
TEL. (617) 722-1639

PUBLIC HEARING
State House, Room A-1
May 10, 2005, 11:00 a.m.

Public Testimony Sign-In Sheet

1. Your name:

Carol Patton

2. Contact information (organization represented or city/town of residence)

Imagine Publishing Inc - Cambridge, MA

3. Bill or matter on which you are testifying:

3823

SUPPORT [] OPPOSE

Note: You may use the space below to write any additional comments. Attach additional sheets if necessary. If you are submitting pre-prepared written testimony, please indicate below and attach. If you wish to submit written testimony in lieu of an oral presentation, please place an "X" in the box ((X)) below.

Please announce and record my written testimony in lieu of an oral presentation.

See Written Testimony

Can also give it orally

WRITTEN ONLY

NOT TESTIFYING,

~~UNLESS~~ UNLESS REQUESTED



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PUBLIC HEARING
State House, Room A-1
May 10, 2005, 11:00 a.m.

Public Testimony Sign-In Sheet

1. Your name:

HARVEY HURVITZ

2. Contact information (organization represented or city/town of residence)

MA RETAIL LUMBER DEALERS ASSOC

3. Bill or matter on which you are testifying:

S - 1708

SUPPORT OPPOSE

Note: You may use the space below to write any additional comments. Attach additional sheets if necessary. If you are submitting pre-prepared written testimony, please indicate below and attach. If you wish to submit written testimony in lieu of an oral presentation, please place an "X" in the box ([X]) below.

Please announce and record my written testimony in lieu of an oral presentation.

pay when paid in 3
states.



The Commonwealth of Massachusetts
Joint Committee on Revenue

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PUBLIC HEARING
State House, Room A-1
May 10, 2005, 11:00 a.m.

Public Testimony Sign-In Sheet

1. Your name:

Bill Rennie

2. Contact information (organization represented or city/town of residence)

Retailers Association of MA

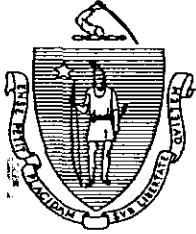
3. Bill or matter on which you are testifying: H2295, 51665, general

SUPPORT [] OPPOSE

Note: You may use the space below to write any additional comments. Attach additional sheets if necessary. If you are submitting pre-prepared written testimony, please indicate below and attach. If you wish to submit written testimony in lieu of an oral presentation, please place an "X" in the box ([X]) below.

[] Please announce and record my written testimony in lieu of an oral presentation.

W. J. Rennie



The Commonwealth of Massachusetts
Joint Committee on Revenue

REP. JOHN J. BINIENDA
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TEL. (617) 722-1639

PUBLIC HEARING
State House, Room A-1
May 10, 2005, 11:00 a.m.

Public Testimony Sign-In Sheet

1. Your name:

Elaine K. Houskn

2. Contact information (organization represented or city/town of residence)

State - Local Tax Institute 617-553-1715

3. Bill or matter on which you are testifying:

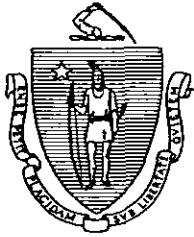
H 2423 Mary's Catering

SUPPORT [] OPPOSE

Note: You may use the space below to write any additional comments. Attach additional sheets if necessary. If you are submitting pre-prepared written testimony, please indicate below and attach. If you wish to submit written testimony in lieu of an oral presentation, please place an "X" in the box ([X]) below.

[] Please announce and record my written testimony in lieu of an oral presentation.

prepared notes + schedule



The Commonwealth of Massachusetts
Joint Committee on Revenue

REP. JOHN J. BINIENDA
HOUSE CHAIR
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BOSTON, MA 02133-1054
TEL. (617) 722-1639

PUBLIC HEARING
State House, Room A-1
May 10, 2005, 11:00 a.m.

Public Testimony Sign-In Sheet

1. Your name:

LEONA ROACH

2. Contact information (organization represented or city/town of residence)

MASS MARINE TRAILERS ASSOCIATION

3. Bill or matter on which you are testifying:

HB 2557

SUPPORT OPPOSE

Note: You may use the space below to write any additional comments. Attach additional sheets if necessary. If you are submitting pre-prepared written testimony, please indicate below and attach. If you wish to submit written testimony in lieu of an oral presentation, please place an "X" in the box ([X]) below.

Please announce and record my written testimony in lieu of an oral presentation.



The Commonwealth of Massachusetts
Joint Committee on Revenue

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SENATE CHAIR
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BOSTON, MA 02133-1054
TEL. (617) 722-1639

PUBLIC HEARING
State House, Room A-1
May 10, 2005, 11:00 a.m.

Public Testimony Sign-In Sheet

1. Your name:

LEENA BEACH

2. Contact information (organization represented or city/town of residence)

EXECUTIVE DIRECTOR, MA MARINE TRADES ASSOCIATION

3. Bill or matter on which you are testifying:

SB. 1686

SUPPORT OPPOSE

Note: You may use the space below to write any additional comments. Attach additional sheets if necessary. If you are submitting pre-prepared written testimony, please indicate below and attach. If you wish to submit written testimony in lieu of an oral presentation, please place an "X" in the box ([X]) below.

Please announce and record my written testimony in lieu of an oral presentation.



The Commonwealth of Massachusetts
Joint Committee on Revenue

REP. JOHN J. BINIENDA
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SENATE CHAIR
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BOSTON, MA 02133-1054
TEL. (617) 722-1639

PUBLIC HEARING
State House, Room A-1
May 10, 2005, 11:00 a.m.

Public Testimony Sign-In Sheet

1. Your name:

Jeffrey L. Busha / Karen Whelan

2. Contact information (organization represented or city/town of residence)

800-343-0939 x 119 - Small Business Service Bureau

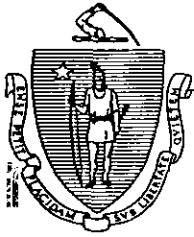
3. Bill of matter on which you are testifying:

S. 1465 - Sales Tax Retention Allowance

SUPPORT OPPOSE

Note: You may use the space below to write any additional comments. Attach additional sheets if necessary. If you are submitting pre-prepared written testimony, please indicate below and attach. If you wish to submit written testimony in lieu of an oral presentation, please place an "X" in the box ([X]) below.

[] Please announce and record my written testimony in lieu of an oral presentation.



The Commonwealth of Massachusetts
Joint Committee on Revenue

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PUBLIC HEARING
State House, Room A-1
May 10, 2005, 11:00 a.m.

Public Testimony Sign-In Sheet

1. Your name:

Bill Vernon

2. Contact information (organization represented or city/town of residence)

NFIB, 10 High St, Boston 02108 617-482-1327

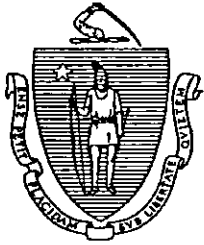
3. Bill or matter on which you are testifying:

S. 1665

SUPPORT OPPOSE

Note: You may use the space below to write any additional comments. Attach additional sheets if necessary. If you are submitting pre-prepared written testimony, please indicate below and attach. If you wish to submit written testimony in lieu of an oral presentation, please place an "X" in the box ([X]) below.

Please announce and record my written testimony in lieu of an oral presentation.



The Commonwealth of Massachusetts

IN THE YEAR TWO THOUSAND FIVE

AS FILED
19 May 2005

AN ACT PROVIDING INCENTIVES TO THE MOTION PICTURE INDUSTRY.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 6 of Chapter 62 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by adding the following subsection:—

(1)(a) For the purposes of this subsection, unless the context clearly requires otherwise, the following words shall have the following meanings:—

“Motion picture”, a feature-length film, a video, a television series defined as a season not to exceed 27 episodes, or a commercial made in the commonwealth, in whole or in part, for theatrical or television viewing or as a television pilot. The term "motion picture" shall not include a production featuring news, current events, weather and financial market reports, talk show, game show, sporting events, awards show or other gala event, a production whose sole purpose is fundraising, a long-form production that primarily markets a product or service, a production containing obscene material or performances as defined by law.

“Motion picture production company”, a company or group of related companies engaged in the business of producing motion pictures, videos, television series, or commercials intended for a theatrical release or for television viewing. The term “motion picture production company” shall not mean or include any company owned, affiliated, or controlled, in whole or in part, by any company or person which is in default on a loan made by the commonwealth or a loan guaranteed by the commonwealth.

"Massachusetts production expense", a production expense for the film clearly and demonstrably incurred in the commonwealth.

"Production expense", an expense incurred in the production of the film. Said term includes wages and salaries paid to individuals employed in the production of the film; the costs of construction, operations, editing, photography, sound synchronization, lighting, wardrobe and accessories; and the cost of purchase or rental of facilities and equipment. The term does not include expenses incurred in marketing or advertising the film.

"Secretary", the secretary of the executive office of economic development.

"Taxpayer", an entity engaged in the making of the film, including a person, firm, partnership or other entity subject to the income tax imposed by the provisions of this chapter.

(b) A taxpayer shall be allowed a credit against the taxes imposed by this chapter for the employment of residents of the commonwealth in connection with the filming or production of one or more motion pictures in the commonwealth within any consecutive 12-month period. The credit shall be equal to 10 per cent of the total aggregate payroll for residents employed in connection with such production when total production costs in the commonwealth equal or exceed \$250,000 but total less than \$1,000,000 during the taxable year. The credit shall be equal to 20 per cent of the total aggregate payroll for residents employed in connection with such production when total production costs in the commonwealth equal or exceed \$1,000,000 during the taxable year. For purposes of this subsection, the term "total aggregate payroll" shall not include the salary of any employee whose salary is equal to or greater than \$1,000,000.

(c) A taxpayer shall be allowed an additional credit against the taxes imposed by this chapter equal to 25 per cent of all Massachusetts production expenses where such expenses exceed 50 per cent of the total production expenses.

(d) The tax credit shall be taken against the taxes imposed under this chapter and shall not be refundable. Any amount of the tax credit that exceeds the tax due for a taxable year may be carried forward to any of the 5 subsequent taxable years.

(e)(1) All or any portion of tax credits issued in accordance with the provisions of this subsection may be transferred, sold or assigned to other taxpayers with tax liabilities under this chapter or chapter 63.

(2) An owner or transferee desiring to make a transfer, sale or assignment shall submit to the commissioner a statement which describes the amount of tax credit for which such transfer, sale or assignment of tax credit is eligible. The owner shall provide to the commissioner such information as he may require for the proper allocation of the credit.

(f) The total amount of tax credits provided under this subsection in connection with any one production shall not exceed \$5,000,000.

(g) The commissioner, in consultation with the secretary, shall promulgate regulations necessary for the administration of the provisions of paragraph (c).

SECTION 2. Chapter 63 of the General Laws, as amended by chapter 304 of the acts of 2004, is hereby further amended by adding after section 38S the following section:—

Section 38T. (a) For the purposes of this section, unless the context clearly requires otherwise, the following words shall have the following meanings:-

"Motion picture", a feature-length film, a video, a television series defined as a season not to exceed 27 episodes, or a commercial made in the commonwealth, in whole or in part, for theatrical or television viewing or as a television pilot. The term "motion picture" shall not include a production featuring news, current events, weather and financial market reports, talk show, game show, sporting events, awards show or other gala event, a production whose sole

purpose is fundraising, a long-form production that primarily markets a product or service, a production containing obscene material or performances as defined by law.

"Motion picture production company", a company or group of related companies engaged in the business of producing motion pictures, videos, television series, or commercials intended for a theatrical release or for television viewing. The term "motion picture production company" shall not mean or include any company owned, affiliated, or controlled; in whole or in part, by any company or person which is in default on a loan made by the commonwealth or a loan guaranteed by the commonwealth.

"Massachusetts production expense", a production expense for the film clearly and demonstrably incurred in the commonwealth.

"Production expense", an expense incurred in the production of the film. Said term includes wages and salaries paid to individuals employed in the production of the film; the costs of construction, operations, editing, photography, sound synchronization, lighting, wardrobe and accessories; and the cost of purchase or rental of facilities and equipment. The term does not include expenses incurred in marketing or advertising the film.

"Secretary", the secretary of the executive office of economic development.

"Taxpayer", an entity engaged in the making of the film, including a person, firm, partnership or other entity subject to the income tax imposed by the provisions of this chapter.

(b) A taxpayer shall be allowed a credit against the taxes imposed by this chapter for the employment of residents of the commonwealth in connection with the filming or production of one or more motion pictures in the commonwealth within any consecutive 12-month period. The credit shall be equal to 10 per cent of the total aggregate payroll for residents employed in connection with such production when total production costs in the commonwealth equal or

exceed \$250,000 but total less than \$1,000,000 during the taxable year. The credit shall be equal to 20 per cent of the total aggregate payroll for residents employed in connection with such production when total production costs in the commonwealth equal or exceed \$1,000,000 during the taxable year. For purposes of this subsection, the term "total aggregate payroll" shall not include the salary of any employee whose salary is equal to or greater than \$1,000,000.

(c) A taxpayer shall be allowed an additional credit against the taxes imposed by this chapter equal to 25 per cent of all Massachusetts production expenses where such expenses exceed 50 per cent of the total production expenses.

(d) The tax credit shall be taken against the taxes imposed under this chapter and shall not be refundable. Any amount of the tax credit that exceeds the tax due for a taxable year may be carried forward to any of the 5 subsequent taxable years.

(e)(1) All or any portion of tax credits issued in accordance with the provisions of this section may be transferred, sold or assigned to other taxpayers with tax liabilities under this chapter or chapter 62.

(2) An owner or transferee desiring to make a transfer, sale or assignment shall submit to the commissioner a statement which describes the amount of tax credit for which such transfer, sale or assignment of tax credit is eligible. The owner shall provide to the commissioner such information as he may require for the proper allocation of the credit.

(f) The total amount of tax credits provided under this subsection in connection with any one production shall not exceed \$5,000,000.

(g) The commissioner, in consultation with the secretary, shall promulgate regulations necessary for the administration of the provisions of paragraph (c).

SECTION 3. Section 1 of chapter 64H of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by adding the following definitions:—

"Motion picture", a feature-length film, a video, a television series defined as a season not to exceed 27 episodes, or a commercial made in the commonwealth, in whole or in part, for theatrical or television viewing or as a television pilot. The term "motion picture" shall not include a production featuring news, current events, weather and financial market reports, talk show, game show, sporting events, awards show or other gala event, a production whose sole purpose is fundraising, a long-form production that primarily markets a product or service, or a production containing obscene material or performances as defined by law.

"Motion picture production company", a company or group of related companies engaged in the business of producing motion pictures, videos, television series, or commercials intended for a theatrical release or for television viewing. The term "motion picture production company" shall not mean or include any company owned, affiliated, or controlled, in whole or in part, by any company or person which is in default on a loan made by the commonwealth or a loan guaranteed by the commonwealth.

SECTION 4. Section 6 of Chapter 64H of the General Laws, as amended by chapter 262 of the acts of 2004, is hereby further amended by added the following paragraph:—

(ww) Sales of tangible personal property to a qualifying motion picture production company.

For the purposes of this paragraph a qualifying motion picture production company must expend in the aggregate not less than \$250,000 within the commonwealth in connection with the filming or production of one or more motion pictures in the commonwealth within any

consecutive 12-month period and have the approval of the secretary of the Massachusetts executive office of economic development and the commissioner.

Any motion picture production company that intends to film all, or parts of, a motion picture or television program in the commonwealth and qualify for the exemption provided by this paragraph shall provide an estimate of total expenditures to be made in the commonwealth in connection with the filming or production of such motion picture or television program and shall designate a member or representative of the motion picture production company as a primary liaison with the commissioner for the purpose of facilitating the proper reporting of expenditures and other information as required by the commissioner. Said estimate of expenditures shall be filed prior to the commencement of filming in the commonwealth. Exempt expenditures shall be made from a checking account at any financial institution in the commonwealth.

Any qualifying motion picture production company that has been approved which fails to expend \$250,000 within a consecutive 12-month period shall be liable for the sales taxes that would have been paid had the approval not been granted. The sales taxes shall be considered due as of the date that taxable expenditures were made.

The commissioner shall promulgate rules for the implementation of this paragraph.

SECTION 5. Notwithstanding any general or special law to the contrary, the commonwealth reserves the right to refuse the use of its name in the credits of any motion picture filmed or produced in the commonwealth.

SECTION 6. Notwithstanding any general or special law to the contrary, except for extraordinary activities, no department or agency of the commonwealth may charge a fee or other cost, except the actual costs incurred by the affected department or agency, for the use of state-owned property for the purposes of making motion pictures. For the purposes of this

section, the term "extraordinary" shall mean an activity outside the normal course of business of an agency or department of the commonwealth, including, but not limited to, demolition or construction projects, or any combination thereof, having a total cost of not less than \$1,000,000.

SECTION 7. This act shall be effective for tax years beginning on or after January 1, 2005.



The Commonwealth of Massachusetts

IN THE YEAR TWO THOUSAND FIVE

General Notes:
• UNIFORM point size
• INDENT PARAGRAPHS &
REMOVE EXTRA LINES
BETWEEN THEM.

AN ACT PROVIDING INCENTIVES TO THE MOTION PICTURE INDUSTRY.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 1 of chapter 64H of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by adding the following ~~new~~ definitions:—

→ "Motion picture", a feature-length film, video, a television series defined as a season not to exceed 27 episodes, or a commercial made in Massachusetts, in whole or in part, for theatrical or television viewing or as a television pilot. The term "motion picture" shall not include a production featuring news, current events, weather and financial market reports, talk show, game show, sporting events, awards show or other gala event, a production whose sole purpose is fundraising, a long-form production that primarily markets a product or service, a production containing obscene material or performances as defined by law.

→ "Motion picture production company", a company or group of related companies engaged in the business of producing motion pictures, videos, television series, or commercials intended for a theatrical release or for television viewing. Motion picture production company shall not mean or include any company owned, affiliated, or controlled, in whole or in part, by any company or person which is in default on a loan made by the ~~Commonwealth~~ or a loan guaranteed by the ~~Commonwealth~~.

SECTION 2. Section 6 of Chapter 64H of the General Laws, as most recently amended by Chapter 262 of the Acts of 2004, is hereby amended by added the following new paragraph:—

(ww) Sales of tangible personal property to a qualifying motion picture production company.

For the purposes of this paragraph a qualifying motion picture production company must expend in the aggregate ~~two hundred fifty thousand dollars or more~~ ^{not less than \$250,000.} in connection with the filming or production of one or more motion pictures in the ~~Commonwealth of Massachusetts~~ ^{with the Commonwealth} within any consecutive ~~twelve-month~~ ^{12.} period and have the approval of the secretary of the Massachusetts Executive Office of Economic Development and the commissioner.

Any motion picture production company that intends to film all, or parts of, a motion picture or television program in Massachusetts and qualify for the exemption provided by this paragraph shall provide an estimate of total expenditures to be made in ~~Massachusetts~~ ^{the Commonwealth} in connection with the filming or production of such motion picture or television program and shall designate a member, or representative, of the motion picture production company to work with the Executive Office of Economic Affairs and the Department of Revenue on the reporting of expenditures and other information necessary to take advantage of the tax relief afforded by this Chapter. Said estimate of expenditures shall be filed prior to the commencement of filming in ~~Massachusetts~~ ^{the Commonwealth}.

Exempt expenditures shall be made from a checking account at any financial institution in

~~Massachusetts.~~

Any qualifying motion picture production company that has been approved which fails to expend ~~two hundred fifty thousand~~ ^{\$250,000} dollars within a consecutive ~~twelve~~ ¹²-month period shall be liable for the sales [?](and use) taxes that would have been paid had the approval not been granted. The sales [?](and use) taxes shall be considered due as of the date that taxable expenditures were made.

The commissioner and the secretary of the ~~Executive Office of Economic Affairs~~ shall promulgate rules for the implementation of this paragraph.

SECTION 3. Section 6 of Chapter 62 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by adding ~~at the end thereof~~ the following ~~new~~ subsection:—

(1) (a) For the purposes of this ^{SUB}section, unless the context clearly requires otherwise, the following words shall have the following meanings:-

"Motion picture", a feature-length film, video, a television series defined as a season not to exceed 27 episodes, a or commercial made in ^{in Commonwealth} Massachusetts, in whole or in part, for theatrical or television viewing or as a television pilot. The term "motion picture" shall not include a production featuring news, current events, weather and financial market reports, talk show, game show, sporting events, awards show or other gala event, a production whose sole purpose is fundraising, a long-form production that primarily markets a product or service, a production containing obscene material or performances as defined by law.

"Motion picture production company", a company or group of related companies engaged in the business of producing motion pictures, videos, television series, or commercials intended for a

theatrical release or for television viewing. ^{the term} Motion picture production company shall not mean or include any company owned, affiliated, or controlled, in whole or in part, by any company or person which is in default on a loan made by the Commonwealth or a loan guaranteed by the Commonwealth.

"Massachusetts Production Expense", a production expense for the Film clearly and demonstrably incurred in the Commonwealth.

"Production Expense(s)", an expense incurred in the production of the Film. Said term includes wages and salaries paid to individuals employed in the production of the Film; the costs of construction, operations, editing, photography, sound synchronization, lighting, wardrobe and accessories; and the cost of purchase or rental of facilities and equipment. The term does not include expenses incurred in marketing or advertising the Film.

22 "Qualified Film Production Expense(s)", a Massachusetts Production Expense if ^{NOT LESS THAN} at least 50% ^{PERCENT} of the total production expenses of the Film are Massachusetts Production Expenses.

"Secretary", the secretary of the Massachusetts Executive Office of Economic Development.

"Taxpayer", an entity engaged in the making of the Film, including a person, firm, partnership or other entity subject to the income tax imposed by the provisions of this chapter.

(b) A taxpayer shall be allowed a credit against the taxes imposed by this chapter for the employment of residents of ^{the commonwealth} Massachusetts in connection with the filming or production of one or more motion pictures in the Commonwealth of Massachusetts within any consecutive ¹² twelve-month period. The credit shall be equal to ~~ten~~ percent of the total aggregate payroll for residents

employed in connection with such production when total production costs in ^{the Commonwealth} Massachusetts equal or exceed ~~two hundred fifty thousand dollars~~ ^{# 250,000} but total less than ~~one million dollars~~ ^{# 1,000,000} during the taxable year. The credit shall be equal to ²⁰ ~~twenty~~ percent of the total aggregate payroll for residents employed in connection with such production when total production costs in ^{the Commonwealth} Massachusetts equal or exceed ~~one million dollars~~ ^{# 1,000,000} during the taxable year. For purposes of this subsection, the term "total aggregate payroll" shall not include the salary of any employee whose salary is equal to or greater than ~~one million dollars~~ ^{# 1,000,000}.

(c) A taxpayer shall be allowed an additional credit against the taxes imposed by this chapter equal to 25 percent of ~~Qualified Film Production Expenses~~.

(d) The tax credit shall be taken against the taxes imposed under this chapter ~~subtracted~~ [?] from the amount of state tax otherwise due for each taxable period, and shall not be refundable. Any amount of the tax credit that exceeds the tax due for a taxable year may be carried forward to any of the ⁵ ~~five~~ subsequent taxable years.

(e)(1) All or any portion of tax credits issued in accordance with the provisions of this ^{SUB} section may be transferred, sold or assigned to other taxpayers with ~~Massachusetts tax liabilities under this chapter or Chapter 63.~~

(2) An owner or transferee desiring to make a transfer, sale or assignment shall submit to the commissioner a statement which describes the amount of ~~Massachusetts low income housing tax~~ credit for which such transfer, sale or assignment of tax credit is eligible. The owner shall

provide to the commissioner ^{Sub} appropriate information so that the tax credit can be properly allocated.

as he may require for the proper allocation of the credit.

(f) ~~provided, however, that~~ ^{TOTAL} the amount of tax credits provided under this subsection shall not exceed ~~five million dollars~~ per production.

\$5,000,000
↑
↓

(g) The commissioner, in consultation with the secretary, shall promulgate regulations necessary for the administration of the provisions of paragraph (c).

SECTION 4. Chapter 63 of the ^{OK} General Laws, as most recently amended by Chapter 304 of the Acts of 2004, is hereby ^{further} amended by adding after section 38S the following ~~new~~ section:—

Section 38T. (a) For the purposes of this section, unless the context clearly requires otherwise, the following words shall have the following meanings:-

"Motion picture", a feature-length film, video, a television series defined as a season not to exceed 27 episodes, a or commercial made in Massachusetts, in whole or in part, for theatrical or television viewing or as a television pilot. The term "motion picture" shall not include a production featuring news, current events, weather and financial market reports, talk show, game show, sporting events, awards show or other gala event, a production whose sole purpose is fundraising, a long-form production that primarily markets a product or service, a production containing obscene material or performances as defined by law.

The term
"Motion picture production company", a company or group of related companies engaged in the business of producing motion pictures, videos, television series, or commercials intended for a theatrical release or for television viewing. ~~Motion picture production company~~ shall not mean or include any company owned, affiliated, or controlled, in whole or in part, by any company or person which is in default on a loan made by the Commonwealth or a loan guaranteed by the Commonwealth.

"Massachusetts Production Expense", a production expense for the ~~Film~~ clearly and demonstrably incurred in the Commonwealth.

"Production Expense(s)", an expense incurred in the production of the ~~Film~~. Said term includes wages and salaries paid to individuals employed in the production of the ~~Film~~; the costs of construction, operations, editing, photography, sound synchronization, lighting, wardrobe and accessories; and the cost of purchase or rental of facilities and equipment. The term does not include expenses incurred in marketing or advertising the ~~Film~~.

"Qualified Film Production Expense(s)", a Massachusetts Production Expense if at least 50% ^{percent} of the total production expenses of the ~~Film~~ are Massachusetts Production Expenses.

"Secretary", the secretary of the ~~Massachusetts Executive Office of Economic Development~~.

"Taxpayer", an entity engaged in the making of the ~~Film~~, including a person, firm, partnership or other entity subject to the income tax imposed by the provisions of this chapter.

(b) A taxpayer shall be allowed a credit against the taxes imposed by this chapter for the employment of residents of ~~Massachusetts~~ ^{The Commonwealth} in connection with the filming or production of one or

more motion pictures in the Commonwealth of Massachusetts within any consecutive ¹² twelve-month period. The credit shall be equal to ¹⁰ ten percent of the total aggregate payroll for residents employed in connection with such production when total production costs in Massachusetts equal or exceed ^{\$250,000} two hundred fifty thousand dollars but total less than ^{\$1,000,000} one million dollars during the taxable year. The credit shall be equal to ²⁰ twenty percent of the total aggregate payroll for residents employed in connection with such production when total production costs in ^{the Commonwealth} Massachusetts equal or exceed ^{\$2,000,000} one million dollars during the taxable year. For purposes of this subsection, the term "total aggregate payroll" shall not include the salary of any employee whose salary is equal to or greater than ^{\$1,000,000} one million dollars.

(c) A taxpayer shall be allowed an additional credit against the taxes imposed by this chapter equal to 25 percent of Qualified Film Production Expenses.

(d) The tax credit shall be taken against the taxes imposed under this chapter, ~~subtracted~~ [?] from the amount of state tax otherwise due for each taxable period and shall not be refundable. Any amount of the tax credit that exceeds the tax due for a taxable year may be carried forward to any of the ⁵ five subsequent taxable years.

(e)(1) All or any portion of tax credits issued in accordance with the provisions of this section may be transferred, sold or assigned to other taxpayers with ~~Massachusetts~~ tax liabilities under this chapter or Chapter 62. [?]

(2) An owner or transferee desiring to make a transfer, sale or assignment shall submit to the commissioner a statement which describes the amount of ~~Massachusetts~~ low-income housing tax

credit for which such transfer, sale or assignment of tax credit is eligible. The owner shall provide to the commissioner ^{such} appropriate information so that the tax credit can be properly allocated. *As it may require further proper allocation of the credit.*

(f) ~~provided, however,~~ ^{total} that the amount of tax credits provided under this ~~sub~~ section shall not exceed five million dollars per production. *\$5,000,000*

(g) The commissioner, in consultation with the secretary, shall promulgate regulations necessary for the administration of the provisions of paragraph (c).

SECTION 5. Notwithstanding any general or special law to the contrary, the ~~Commonwealth of Massachusetts~~ reserves the right to refuse the use of ^{ITS} Massachusetts' name in the credits of any motion picture filmed or produced in the ~~Commonwealth~~.

SECTION 6. Notwithstanding any general or special law to the contrary, except for extraordinary activities, no department or agency of the ~~Commonwealth~~ may charge a fee or other cost, except the actual costs incurred by the affected department or agency, for the use of state-owned property for the purposes of making motion pictures. For the purposes of this section, the term "extraordinary" shall mean an activity outside the normal course of business of an agency or department of ^{the} ~~this~~ Commonwealth, including, but not limited to, demolition or construction projects, or any combination thereof, having a total cost ^{of} \$1,000,000.

NOT LESS THAN

SECTION 7. This act shall be effective for tax years beginning on or after January 1,
2005.

Keefe, Scot (HOU)

From: State House News Service [news@statehousenews.com]
Sent: Tuesday, May 10, 2005 4:51 PM
To: SHNS3
Subject: LAWMAKERS WARM TO FILM INDUSTRY'S PUSH FOR TAX CREDITS, EXEMPTIONS

LAWMAKERS WARM TO FILM INDUSTRY'S PUSH FOR TAX CREDITS, EXEMPTIONS

By Cyndi Roy
STATE HOUSE NEWS SERVICEcyndi@statehousenews.com

STATE HOUSE, BOSTON, MAY 10, 2005...Oscar-winning actors, directors and film crew workers joined Beacon Hill lawmakers Tuesday to promote a plan they say will bring jobs and money to Massachusetts by shining the Hollywood spotlight on the Bay State.

Dozens of film industry members, including actors Chris and Marianne Cooper and director Sam Weisman, voiced their support for legislation that would provide tax exemptions and credits to production companies that film movies and certain other projects in Massachusetts.

The proposal filed by Rep. Thomas O'Brien (D-Kingston) would exempt production companies spending \$250,000 or more on film production in Massachusetts from the state's 5 percent sales tax. It would also provide an employment tax credit of 10 to 20 percent for moviemakers that hire Bay State residents. Companies would also be given free use of state-owned land.

Proponents of the bill (H 3823) say Massachusetts is a desirable backdrop for movies and television shows, but companies are discouraged from coming here because of the high costs of doing business.

"Without tax incentives, the Commonwealth of Massachusetts has fallen behind the nation and the world and something needs to be done so that people that live here, that prosper here, that grew up here, that went to school here can actually make a film or television series here in the Commonwealth of Massachusetts," O'Brien told members of the Committee on Revenue during a public hearing on the bill.

Half a dozen legislators testified in favor of the bill.

"This is an investment that makes money for Massachusetts," said Rep.

Daniel Bosley (D-North Adams). "People come in here and then they leave. We don't have to educate their kids, we don't have to clean their water. They come in, spend money, and then they go. How cool is that?"

More than 35 other states offer similar tax incentives, with lawmakers in South Carolina, Georgia, and Arizona approving similar proposals in the last week. Supporters say the tax package will boost the Bay State's ability to compete with those and other states like Louisiana, which last year took in more than \$300 million in revenue from productions there.

"This is a race that we cannot afford to lose, and we are," O'Brien said.

According to the legislation, companies would be eligible for the tax incentives if they produce "a nationally distributed feature-length film, video, television series, or commercial made in Massachusetts." O'Brien said he plans to amend the bill to include companies that produce shorter films and documentaries as long as they spend the minimum \$250,000.

The bill will also be amended to give companies production tax credits and allow companies to sell their unused credits to other companies.

The bill expressly excludes from the proposal companies creating "a production feature news, current events, weather and market reports, or public programming, talk show, game show, sports event, awards show or other gala event, a production that solicits funds, a production that primarily markets a product or service, a production containing obscene material or performances as defined by law, or a production primarily for private, industrial, corporate or institutional purposes."

Discussion over O'Brien's proposal comes amid a feud between the heads of the quasi-public

Massachusetts Sports and Entertainment Commission and the independent Massachusetts Film Bureau, who are jockeying to serve as the official liaison between the state and the film industry.

Donald Stirling, chief executive officer of the commission, said he has experienced first-hand the difficulty in persuading industry executives to come to Massachusetts. "There's an axiom in Hollywood that says when it comes to show business, it is far more business than it is show," Stirling told the committee. "And right now, we don't have a business leg to stand on."

According to O'Brien, at least 51 major motion pictures with a Massachusetts theme have been produced in the last 10 years. Of those, eight were filmed predominately in Massachusetts, including "Celtic Pride" and the "The Lost Boys." During the same time, more than 20 television series with a Massachusetts theme have been produced. Only one, "Boston Common," was filmed in Massachusetts.

Walt Disney Studios executive Mary Ann Hughes told the committee that the Disney company will continue to film movies in other states and countries unless Massachusetts makes moviemaking more affordable.

"We have a project that is actually right now scripted for Boston," she said. "But unfortunately Massachusetts, Boston, is not on our radar for filming it because we already know that it's too expensive."

Committee Co-Chairman Rep. John Binienda (D-Worcester) and several other members voiced their support for the bill. The bill also has the backing of House leadership, Speaker Pro Tem Thomas Petrolati (D-Ludlow) told the committee.

Massachusetts resident Sam Weisman directed the \$53 million film "What's the Worst that Can Happen?" here in 2000. On that film, he said, the production company employed "hundreds and hundreds of local residents," with more than 70 percent of the crew from Massachusetts. In addition to actors, workers include grips, electricians, drivers, food service employees and others.

"I would to go out on a limb and say it's the best crew I've ever worked with," Weisman said.

But the high cost of production, coupled with the closing of the state's film office in 2002, has kept him from making any more movies here.

- END -

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Chairpersons Creem and Binienda, Honorable Committee Members and Colleagues:

My name is Carol Patton. I publish IMAGINE Magazine, which covers film, television, and new media production, the very industry that House Bill 3823 is designed to support. IMAGINE came out in support of this bill some time ago and has over the last several months encouraged all who engage in this industry to support it. I trust you will see that support today.

It is important to understand that the entertainment industry is our country's number one, chief export and that the Commonwealth of Massachusetts is not getting its fair share of the motion picture, film, television, and related industries work even though our state is most suitable and capable of producing hundreds of millions of dollars every year.

The key words for all the Motion Picture Studios and Major Producers are "bankable incentives." And it is important to know that decisions as to where a film will be shot is now made by committee. That would be a committee that includes a lot of accountants! Not the stars, not the A-List Director (unless you're a Clint Eastwood or Martin Scorsese), sometimes not even the Producer, but the committee with lots of accountants who look for the best bottom line opportunity and those "bankable incentives."

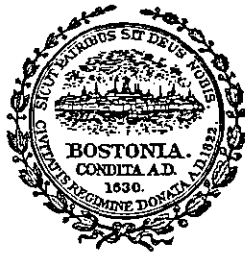
"Bankable incentives" means the money from the incentives is available right away and that tax credits and production credits are recoverable by non Massachusetts taxpayers through the sale and transfer of such credits. Bear in mind that this will create a whole new industry that will pay taxes in Massachusetts if only Massachusetts companies are sanctioned to manage sales and transfers. These new companies will also become marketers for the industry.

House Bill 3823 can level the playing field so that Massachusetts can compete. We must have viable incentives. We must aggressively and proactively market them. And it must be clear that the imprimatur, the support, the underpinning, if you will, for this bill is that of the Commonwealth. Studios and major producers will not come if that is not clearly the case. They need that security. House 3823 is clear. We must have one office with sole authority.

We must keep the "teeth" in this bill and activate it as quickly as possible. Every week talented and savvy artists and technicians leave our borders to move to NYC and LA where they will pay their taxes to the states of New York and California. They want to work here and will return when the work comes. Let's bring them back and bring the work to Massachusetts by passing House Bill 3823.

Respectfully submitted May 10th, 2005,

Carol Patton, Publisher
IMAGINE Publishing, Inc.



H. 3823

JOHN M. TOBIN, JR.
BOSTON CITY COUNCIL
DISTRICT 6

May 10, 2005

Joint Committee on Revenue
Room 34
State House
Boston, MA 02133

Dear Chair Creem and Chair Binienda:

As Chair of the Boston City Council's Arts, Film, Humanities & Tourism Committee I write today in full support of House Bill 3823, "An Act to Provide Certain Tax Incentives to the Motion Picture Industry."

As you know, the motion picture industry is very competitive in the United States and abroad. This legislation, once passed, will put Massachusetts on a level playing field when it comes to competing with other American cities and states.

In addition, and perhaps more importantly, this industry provides hundreds of jobs that come with every production. This proposed legislation will reward those productions that put residents of the Commonwealth to work.

Thank you in advance for your consideration of House Bill 3823. I look forward to its favorable recommendation from the Joint Committee on Revenue.

Sincerely,

John M. Tobin, Jr.
Boston City Council
District 6

BOSTON CITY HALL, ONE CITY HALL SQUARE, BOSTON, MASSACHUSETTS 02201
(617) 635-4220 FAX: (617) 635-4203 E-MAIL: JOHN.TOBIN@CI.BOSTON.MA.US

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(CHAIRMAN) BINIENNA

VICE (CHAIRMAN) COUGHLIN

DAVID MANNET TESTIMONY SUBMITTED WITHIN
VIA DICK KALTMANN

QUESTIONS
BEST TO RAE
617 335-3416

David Mamet

May 10, 2004

The Honorable Cynthia S. Creem, Senate Chair
The Honorable John J. Binienda, House Chair
The Joint Committee on Revenue
State House, Room 34
Boston, MA 02133

Dear Chairwoman Creem and Chairman Binienda,

It is with confidence and a sense of urgency that I submit this written testimony to you regarding House Bill 3823, also known as "The O'Brien Bill". I had hoped to attend the public hearing and speak with you directly, but a previous commitment has prevented me from joining you.

As a writer, director, and producer, I am painfully aware that without tax incentives, the Commonwealth of Massachusetts has been unable to compete in the national and international motion picture production market. Sadly, major motion picture production companies, producing projects with a Massachusetts theme, have been forced to shoot in other locations across the country, and even Canada, simply because Massachusetts' current lack of incentives makes it economically impractical to film here. As you know, this equates to a significant loss of jobs and other state revenue.

But, given my own personal experience, I have every confidence that the O'Brien Bill is the appropriate vehicle to remedy this situation. By providing exemptions for sales and use tax, as well as a substantial employment tax credit, this legislation will allow Massachusetts to compete with the most popular film locals including New York, Louisiana, California, and Pennsylvania - all of whom offer film incentives - as well as Canada.

Similarly, I am aware that amendments, supported by the industry, will be proposed to include a production tax credit, the ability to sell credits, and the designation of the Massachusetts Sports and Entertainment Commission as the sole service provider for film production and development in the Commonwealth. I wholeheartedly support these additions and know that they will further guarantee Massachusetts' prominent role in the lucrative field of motion picture production.

P.O. Box 7578, Santa Monica, CA 90401
ph: 310-664-8819 fax: 310-664-8845

I am particularly supportive of the designation of the Massachusetts Sports and Entertainment Commission as the Commonwealth's sole liaison in the field of motion picture production. In my professional experience, I can attest that both Mark Drago and Don Sterling possess the leadership and expertise to act on behalf of the Commonwealth as effective and efficient ambassadors. There is no other public or non-profit agency in existence that can offer the same level of professional prowess.

Let me reaffirm my unconditional support of the O'Brien Bill. I appreciate your attention to this legislation and hope that you are able to report the bill out favorably. Please feel free to contact me if I can provide additional information relative to the need for the legislature to pass the O'Brien Bill.

Sincerely,



DAVID MAMET



David Mamet

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