

**HOUSE 4252:**

**AN ACT PROVIDING INCENTIVES TO THE MOTION  
PICTURE INDUSTRY**

(Summary reflects text as redrafted.)

**SPONSORS:**

Representatives O'Brien, Wallace, Leary and Coughlin

**LEGISLATIVE  
HISTORY:**

07/11/05 House reported from the House Committee on Ways  
and Means  
07/11/05 Recommended new draft for H.4060  
07/12/05 Substituted for H.4060  
07/12/05 House ordered to a third reading  
07/12/05 Rules suspended  
07/12/05 House read third  
07/12/05 Amendment adopted  
07/12/05 House passed to be engrossed  
07/13/05 Senate read and referred to the Senate Committee on  
Ways and Means

**EXISTING LAWS  
AFFECTED:**

G.L. ch. 62, § 6; ch. 64H, §§ 1, 6; ch. 64I, § 7

**PROPOSED  
LEGISLATION:**

- Establishes a tax credit for qualifying motion picture production companies that may be used to offset either personal or corporate income taxes.
- The credit applies to any production cost within any consecutive 12 month period if at least 50% of the total production costs are incurred in Massachusetts or if at least 50% of the total principal photography days of the film take place in Massachusetts. The credit is equal to 15% of the production costs when total production costs in Massachusetts are less than \$5M; 20% of the production costs if the total production costs are between \$5M and \$10M; 25% of the production costs if the total production costs are greater than \$10M.
- Production costs or expenses include salaries of all employees on the film, but not of any employee whose salary is equal to or greater than \$1M.
- Caps the credit at \$10M per film. Any unused credits may be transferred or assigned to a third party or carried forward for up to 5 years.

- Exempts qualifying motion picture production companies from the tangible personal property tax and from the sales tax on supplies, technical equipment and machinery used in conjunction with the production of a motion picture.
- Waives the hotel/motel room excise for occupants who are motion picture production company employees whose stay is 20 or more consecutive days and who are actively working on the making or producing of a motion picture.
- Makes legislation effective on January 1, 2006.

**AGENCY  
COMMENTS:**

None

**ESTIMATED  
COST:**

This legislation may result in a revenue loss of as much as \$19.6M in fiscal year 2006, as much as \$40.1M in fiscal year 2007, and as much as \$41.4M in fiscal year 2008.

(NPM)

Film and video production in **Louisiana** increased dramatically in 2003 and 2004, associated with the availability of tax credits for investment in qualifying projects and the employment of Louisiana residents, as well as an exemption from state sales taxes.

-Projects participating in the incentives and completing production in 2002 reported \$11.8 million of production budget,

-Completions in 2003 reported \$188.8 million of budget,

-Completions in 2004 reported \$354.7 million of budget.

Compensation of state residents employed on projects was reported as:

\$75,000 in 2002,

\$30.0 million in 2003,

and \$29.6 million in 2004.

Prior to the availability of these incentives, production activity in the state may have averaged only about \$10 million to \$30 million per year, and was quite sporadic.

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**From the Senate President's Inaugural Address on  
January 5, 2005:**

--“First, we will continue to place job creation at the top of our agenda, by passing initiatives that will help stimulate our economy. Second, we will continue to responsibly reform state government. Third, we will work aggressively to make health care more accessible and affordable.

Finally, our agenda will focus upon the needs of working families in the Commonwealth.....”

“I challenge this body to Continue to look for every possible way to keep good jobs in Massachusetts and encourage the private sector to create new ones...”

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## Louisiana FILM INDUSTRY OVERVIEW

After Silicon Valley, the film and television production business remains the **largest high-tech, high profit, non-polluting industry in the world** generating **over \$40 billion per year**. According to the Motion Picture Association of America, the film industry is one of California's leading economic engines, generating \$27 billion per year in economic activity and employing 475,000 Californians. The film industry is economically good for Louisiana because 50% of a production's total budget generally ends up as direct expenditures in the local community where the actual shooting is done.

For example, the 84 foreign mostly U.S. runaway productions that were shot in British Columbia in 2001 poured CAN\$856.8 million (\$544 million) into the local economy, compared with CAN\$760 million in 2000.

All types of productions leave money in the state which effects a wide array of industries: purchasing set equipment, hiring a crewbase, lodging, restaurant patronage, catering, vehicle rental, gasoline purchase, location fees, security, wardrobe needs, hair supplies, prop purchases, among many other miscellaneous expenses. Filming also brings national and international exposure of local areas. Since July 2002, Louisiana has had over \$900 million in new production come to the state and that number continues to grow daily. In addition, Louisiana resident payroll alone has amassed over \$85 million in wages and benefits since 2003.

Communities and cities that have been featured in films over the past two years include: New Orleans, Baton Rouge, Napoleonville, Clinton, Donaldsonville, Slidell, Zachary, Morgan City, and Thibodeaux just to name a few

## Film Credit Talking Points

Although Massachusetts has much to offer the filmmaking industry such as its history, natural beauty, and especially trained stage workers and technicians, films are rarely produced here. The reason is often economics—other states offer tax breaks and other incentives that reduce the costs of filming. Although the upcoming Martin Scorsese film *The Departed* is set in Boston, most of the filming was done in New York City due to recently passed tax incentives. As a result, only a fraction of the movie was shot in the Boston area.

While there will be a cost to providing these credits, whatever revenue we forgo will be more than made up for in new economic activity. The film industry is an \$8 trillion dollar a year industry and this bill will make Massachusetts a major destination. When *The Departed* was being shot in Boston, however, the production pumped more than \$350,000 a day into the local economy. In fact, executives from Disney Studios have indicated that if the conference committee bill becomes law this session, they will bring several projects to our state as soon as next year.

### The Conference Committee bill breaks down as follows:

**Sales & Use Tax:** The Bill exempts the following from the Sales & Use Tax:

- Purchases made by a student filmmaker at an accredited film school
- 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.

**Employment-based Credit against Income Tax/Corporate Excise:** There will be a credit against Mass. Income Tax/Corporate Excise for a production company:

- filming in Mass., and
- with Mass. production costs of \$250,000 or more

Credit equals 20% of aggregate payroll under \$1,000,000 that constitutes Massachusetts source income.

### Qualified Film Production Tax Credit

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

- Mass. production expenses exceed 50% of total production expenses, or
- At least 50% of days of “principal photography” occur in Mass.

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<sup>1</sup> 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.

Production Credit is equal to 25% of all Massachusetts production costs, less the payroll used to obtain the employment credit above.

**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 & DOR are required to conduct an economic impact study of motion picture production and development in the Commonwealth and issue a report & any recommendations to the Legislature by Dec. 31, 2011.

**Sunset Clause** This act will sunset in 7 years—January 1, 2013

### **Conference**

The Conference bill, like the Senate and House versions, attracts business through a series of tax credits based upon how much is spent on payroll and production expenses.

The Conference, however, made several important changes to the engrossed House and Senate versions:

First, the sales tax exemptions will be extended to students at accredited film schools. That way we not only give a benefit to Spielberg and Scorsese, but to the next generation of filmmakers as well.

Second, we tightened previous versions of the bill so that most of a production's payroll will not be double counted for both the employment and qualified production credits.

Finally—and maybe most important—these tax incentives will sunset in 7 years. By then we will know if, in fact, the movie industry has produced the jobs and economic activity that it has promised.

### **Cost**

DOR has offered an estimate on the House version of this bill. That estimate is flawed and does not accurately reflect the impact of this bill.

That estimate was based on the most recent year for which the DOR could obtain information on the film industry in Massachusetts—2002, which is when *Mystic River* was filmed here. That film meant a total of 10 weeks of filming. In 2001, 2003 and 2004, however, the major studios spent no more than 4 weeks in any year filming in Massachusetts.



Whereas the stage workers union (IATSE Local 481) reported that their members earned \$1.4 million in wages in 2002, In 2001 the wages were about \$550,000, and only a little over \$400,000 in 2004.

Even in 2002, the most the *Mystic River* Credit could have cost would have been \$7 million. The employment credit for all other union employees on all other filming jobs would have amounted to only \$120,000.

In 2004 the employment credits for wages would have amounted to about \$80,000.

(MPC) MASS. PRODUCTION COALITION

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**"AN ACT PROVIDING INCENTIVES TO THE MOTION PICTURE INDUSTRY"**  
**-CONFERENCE COMMITTEE REPORT (DRAFT ONLY)-**

**HIGHLIGHTS**

**FLOOR**

For a motion picture production company to qualify for a tax credit they must expend in the aggregate not less than \$250,000 within the Commonwealth.

**EMPLOYMENT TAX CREDIT**

-Provides a Tax Credit equal to 20 percent of the total payroll paid by a production company that constitutes Massachusetts source income.

-Payroll does not include any employee whose salary is in excess of \$1,000,000

**PRODUCTION TAX CREDIT**

-Provides a Tax Credit equal to 25 percent of all Massachusetts production expenses if the production expenses exceed 50% of the total production expenses for a motion picture or at least 50% of the total principal photography days of the film take place in the Commonwealth.

-The Production credit does not include the payroll expenses used to claim a credit pursuant to the Employment tax credit

**CARRY FORWARD**

- No tax credit shall be refundable. Any amount of the credit that exceeds the tax due for a taxable year may be carried forward to any of the 5 taxable years.

**TAX CREDIT LIMIT**

- The total amount of tax credits provided in connection with any one motion picture shall not exceed \$7,000,000

**USE OF STATE OWNED PROPERTY**

- A department or agency of the Commonwealth shall not charge a fee or other cost except actual costs incurred by the dept. or agency, for the use of state-owned property for the purposes of making motion pictures.

**REPORTS**

- The secretary of economic development shall conduct an economic impact study of motion picture production and development in Massachusetts and issue a report with recommendations no later than December 31, 2011. The secretary shall also file annually an economic report of all production activity that receives a tax credit pursuant to this act.

- The department of revenue shall, annually, issue a report detailing the amount of tax credit certificates issued to taxpayers pursuant to this act.

**EFFECTIVE DATES**

- This act shall be effective on January 1, 2006 and end on January 1, 2013.

- Credits allowed pursuant to this act may be carried forward after January 1, 2013.

**H. 4252 (Engrossed by the House)**

**Lees Amendment**

**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)<sup>1</sup> 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.

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.

**Sales & Use Tax:**

Amendment seeks to exempt from the *Sales & Use Tax* "all supplies, technical equipment and machinery used in conjunction with the production of a motion picture" including, but not limited to:

- 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.

Unlike the House bill, there is no \$250,000 threshold.

**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 payroll<sup>2</sup> if Mass.  
production-related expenses  
\$25,000 - \$10  
million
- 20% of aggregate Mass.  
resident payroll<sup>3</sup> 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 for  
Exemption & Credit

**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.

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<p><b><u>Qualified Film Production Tax Credit</u></b></p> <p>An additional credit for films qualifying for above employment-based credit and either:</p> <ul style="list-style-type: none"> <li>• Mass. production expenses exceed 50% of total production expenses, or</li> <li>• At least 50% of days of "principal photography" occur in Mass.</li> </ul> <p>Credit is equal to 25% of all Massachusetts production costs.</p>	<p><b><u>Qualified Film Production Tax Credit</u></b></p> <p>An taxpayer may qualify for the film production expenses credit if:</p> <ul style="list-style-type: none"> <li>• At least 50% of the total production expenses are incurred in Massachusetts, <i>or</i></li> <li>• At least 50% of the total "principal photography" days of the film take place in Mass.</li> </ul> <p>This credit equals:</p> <ul style="list-style-type: none"> <li>• 15% if the production costs incurred in Mass. are less than \$5 million;</li> <li>• 20% if the production costs incurred in Mass. are between \$5 million and \$10 million;</li> <li>• 25% if the production costs incurred in Mass. Equal or exceed \$10 million.</li> </ul> <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><b><u>Credit Limit</u></b></p> <p>Total credits for any one production not to exceed \$7 million per project.</p>	<p><b><u>Credit Limit</u></b></p> <p>Total credits for any one production not to exceed \$10 million per project.</p>
<p><b><u>State-Owned Property:</u></b></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><b><u>State-Owned Property:</u></b></p> <p>Unlike the House bill, there are no provisions regarding fees for the use of state-owned property.</p>

1,000,000/3,000,000 SALARY

**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.

**Impact Studies & Reports**

Unlike the House bill, there are no studies or reporting requirements on the fiscal impact of this credit.

**Hotel Tax**

This amendment contains a provision that exempts employees of motion picture production companies from paying the hotel tax if they:

- 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.

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THE STATE OF TEXAS, COUNTY OF DALLAS, BEFORE ME, the undersigned authority, on this day personally appeared \_\_\_\_\_, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed. My commission expires \_\_\_\_\_.

**H. 4252**  
(Engrossed by the House)

**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)<sup>1</sup> 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.

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.

**S. 2187**  
(Engrossed by the Senate)

**Sales & Use Tax:**

Amendment seeks to exempt from the *Sales & Use Tax* "all supplies, technical equipment and machinery used in conjunction with the production of a motion picture" including, but not limited to:

- 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.

Unlike the House bill, there is no \$250,000 threshold.

**Conference Committee**  
**Draft**

**Sales & Use Tax:**

**Senate Version**

Amendment seeks to exempt from the *Sales & Use Tax* "all supplies, technical equipment and machinery used in conjunction with the production of a motion picture" including, but not limited to:

- 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<sup>1</sup>
- character generators.

No \$250,000 threshold.



**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 payroll<sup>2</sup> if Mass. production-related expenses \$25,000 - \$10 million
- 20% of aggregate Mass. resident payroll<sup>3</sup> 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 for Exemption & Credit

**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:**

**Compromise**

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

Credit equals:

- 15% of aggregate Employee payroll if Mass. production-related expenses are under \$5 million
- 20% of aggregate Employee payroll if Mass. production-related expenses exceed \$5 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 for Exemption & Credit

Removes qualifying floor and makes the credit equal to 20% for productions over \$5 million

<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"> <li>• Mass. production expenses exceed 50% of total production expenses, or</li> <li>• At least 50% of days of "principal photography" occur in Mass.</li> </ul> <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"> <li>• At least 50% of the total production expenses are incurred in Massachusetts, <i>or</i></li> <li>• At least 50% of the total "principal photography" days of the film take place in Mass.</li> <li>• This credit equals: 15% if the production costs incurred in Mass. are less than \$5 million;</li> <li>• 20% if the production costs incurred in Mass. are between \$5 million and \$10 million;</li> <li>• 25% if the production costs incurred in Mass. Equal or exceed \$10 million.</li> </ul> <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>House version</p> <p>An additional credit for films qualifying for above employment-based credit and either:</p> <ul style="list-style-type: none"> <li>• Mass. production expenses exceed 50% of total production expenses, or</li> <li>• At least 50% of days of "principal photography" occur in Mass.</li> </ul> <p>Credit is equal to 25% of all Massachusetts production costs.</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> Compromise \$8 million per project</p>

<p>&amp; Senate, the House and Senate Committees on Ways &amp; Means, the Joint Committee on Revenue and with the Joint Committee on Economic Development.</p>		<p>shall file the same by Dec. 31 with the Clerks of the House &amp; Senate, the House and Senate Committees on Ways &amp; Means, the Joint Committee on Revenue and with the Joint Committee on Economic Development.</p>
<p><b><u>Hotel Tax</u></b> None</p>	<p><b><u>Hotel Tax</u></b> 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"> <li>• Occupy the room for 20 or more consecutive days, and</li> <li>• Demonstrate that they are working on the production of a motion picture that qualifies for the qualified production credit above.</li> </ul>	<p><b><u>Hotel Tax</u></b> <i>House Version</i> None</p>
<p><b><u>Sunset Clause</u></b> None</p>	<p><b><u>Sunset Clause</u></b> January 1, 2011</p>	<p><b><u>Sunset Clause</u></b> <i>Modified Senate Version</i> January 1, 2011, but with language that allows the credits to carry forward after that date.</p>
<p><b><u>Effective Date</u></b> January 1, 2005</p>	<p><b><u>Effective Date</u></b> January 1, 2006</p>	<p><b><u>Effective Date</u></b> <i>Compromise</i> November 1, 2005</p>

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:—

(1)(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 15 per cent of the total aggregate payroll for people employed within the commonwealth by a motion picture production company when total production costs incurred in the commonwealth are less than \$5,000,000. The credit shall be equal to 20 per cent of the total aggregate payroll for people employed within the commonwealth by

such motion picture production company when total production costs incurred in the commonwealth equal or exceed \$5,000,000 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.

(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 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 production shall not exceed \$8,000,000.

(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 15 per cent of the total aggregate payroll for persons employed within the commonwealth by a motion picture production company when total production costs incurred in the commonwealth less than \$5,000,000 during the taxable year. The credit shall be equal to 20 per cent of the total aggregate payroll for persons employed within the commonwealth by the production company when total production costs incurred in the commonwealth equal or exceed \$5,000,000 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 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 production shall not exceed \$8,000,000.

(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 chapter 64H of the General Laws, as so appearing, is hereby amended by adding the following paragraph:--

(ww) all supplies, technical equipment and machinery used in conjunction with the production of a motion picture, as defined in section 6 of chapter 62, which would otherwise qualify for a credit as provided in said chapter 62 or chapter 63; including, but not limited to, 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.

SECTION 5. Section 7 of chapter 64I of the General Laws, as so appearing, is hereby amended by adding the following subsection:--

(f) The sale of all supplies, technical equipment and machinery used in conjunction with the production of a motion picture, as defined in section 6 of chapter 62, which would otherwise qualify for a credit as provided in said chapter 62 or chapter 63; including, but not limited to, 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.

SECTION 6. 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 7. 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 8. 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, 2009; 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 9. The department of revenue shall, annually, issue a report detailing the amount of tax credit certificates issued to taxpayers pursuant to this act and shall provide an estimate of the cost to the commonwealth of the tax credits contained in this act and shall file the report by December 31 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.

SECTION 10. This act shall be effective for tax years beginning on or after November 1, 2005 and before January 1, 2011, but credits allowed pursuant to this act may be carried forward pursuant to sections 1 and 2 after January 1, 2011.

## LOUISIANA

---Film production has become a crucial source of income for Louisiana, which in 2002 adopted among the most aggressive tax incentives in the country. *← THIS IS WHAT WE MUST COMPETE WITH.*

---The state has the best film tax credit program in the country. Unlike other states, Louisiana grants the tax credits up front, in effect allowing producers to raise part of their production costs.

The wild success of the film tax credit led the Legislature this past year to limit the credits to actual in-state expenditures but give an increase credit for hiring Louisiana residents and apply the credits to the construction of infrastructure such as soundstages and post-production editing facilities.

- \* ---An estimated 20 movies will be shot in the state (Louisiana) this year, with a direct economic benefit estimated at \$125 million. (While the total budgets of films shot in Louisiana is higher, not all of the money is spent in the state.)
- \* ---In 2004, the state racked up an estimated \$377 million in film production.
- \* ---Louisiana's program created hundreds of new jobs and spawned \$375 million in 2004 revenue for the state from the making of films like "Ray" and "Mr. 3000." The revenue was up from \$20 million before the program.

*THESE ARE LOUISIANA FIGURES.  
EVEN WITH THE HURRICANE. THEY ARE  
CAPABLE OF KEEPING THEM UP.*

SEN. JAMES TIMILTY VIA FAX 617 722 - 1056  
REP. BRIAN WALLACE VIA FAX 617 722 - 2239

Discussion Points for Senate Consideration of House Bill 4252  
(Referred to the Senate Committee on Ways and Means on July 13, 2005)

### AN ACT PROVIDING INCENTIVES TO THE MOTION PICTURE INDUSTRY

The House Ways and Means Committee Bill (H. 4252) was signed by Chairman Robert A. DeLeo and passed on the floor July 12, 2005 (147-4). Modeled after a Louisiana Law, the current language is closer to Louisiana than any other incentive legislation in the nation.

The Louisiana elements of the Massachusetts bill are critical to attracting the film production revenue the State of Louisiana would have retained prior to Hurricane Katrina, especially in the transferability of the tax credits. Louisiana revenues since their bill passed in 2003 started from a base of \$24 million and reached \$350 million in 2005. They were projected to approach \$700 million in 2006 before the tragic natural disaster.

State competition for Louisiana business increased recently with the passing of a Rhode Island law and the head start they have with a top industry professional working for the Ocean State. New Mexico, New York, Pennsylvania and other states are now competing for this business however H. 4252 would give us an advantage over other states.

The Senate could improve the bill by making the waiver of sales and use tax for qualified production expenses explicit in Section 2. The waiver is currently only implied in Section 4 (lines 24-31). An amendment could provide additional indemnification for the Commonwealth by requiring insurance and a completion bond to ensure filmmakers finish their project as promised.

We recommend avoiding amendments, bills, and budget language changes such as those offered in the past by Senator Brian Lees which consistently attempt to place the phrase "Massachusetts Film Bureau" back into the budget or legislation.

One such amendment in 2004 placed in the tourism section of the budget caused extensive damage to the Commonwealth's reputation and a significant loss of production expenditures as a result of the confusion.

The Film Office location and oversight is correctly expressed in the budget under the Executive Office of Economic Development and should not be changed.

Amendments or claims should have a policy basis. "Credit" for films yet to come to Massachusetts should not be taken at face value as Hollywood decision makers on Louisiana based and other projects await your advice. We know that the Senate will be heard in this matter and hope that these suggestions will assist in your deliberations.

**DEBATE WILL FIRST COME ON YOUR MOTION TO LAY THE MATTER ON THE TABLE.**

**IF YOU WOULD LIKE TO KEEP THE MATTER ON THE TABLE:**

-THERE WILL MOST LIKELY BE DEBATE IN WHICH THE MINORITY

LEADER MAY ASK YOUR INTENT. MAXIMUM OF 10 MINUTES

DEBATE AND THEN A ROLL CALL ON YOUR MOTION TO LAY ON THE TABLE.

- IF MOTION PREVAILS THEN THE BILL WILL NOT BE TAKEN UP.
- IF IT IS DEFEATED THEN THE NEXT QUESTION WILL BE ON PASSING THE TIMILTY / CREEM AMENDMENT.

**IF YOU WOULD LIKE TO WITHDRAW YOUR MOTION TO LAY THE MATTER ON THE TABLE:**

- NOTIFY THE PRESIDENT OF YOUR INTENT BEFORE SESSION
- WHEN THE SESSION MOVES INTO THE ORDERS OF THE DAY (CALENDER). FIRST MATTER WILL BE YOUR MOTION.
- STAND IMMEDIATELY AND STATE:

***"MR. PRESIDENT, I ASK UNANIMOUS CONSENT TO WITHDRAW MY MOTION TO LAY THIS MATTER ON THE TABLE."***



JIM, ON BACKGROUND, THIS WAS BUDGET  
ACTIVITY ON FILM ISSUES

Floor Number: 311 Clerk Number: 549

#### RELATIVE TO ESTABLISHING A MASSACHUSETTS FILM OFFICE

Ms. Creem moved that the bill be amended, in Section 2, in item 7007-0300, by inserting after the word "industries;" the following wording:- "provided, that the office shall establish a Massachusetts Film Office that shall be the primary service provider for film production and development in the commonwealth;" **ADOPTED**

Floor Number: 332 Clerk Number: 588

#### MASSACHUSETTS FILM BUREAU

Mr. Creedon moved that the bill be amended, in Section 2, in item 7007-0900, by striking out the following words:- "provided further, that not less than \$5,000 shall be expended for the Massachusetts Film Bureau and the agency shall be the primary service provider for film production and development in the commonwealth;" **REJECTED**

Floor Number: 1 Clerk Number: 46

#### FILM TAX CREDIT

Messrs. Lees, Tisei, Tarr, Knapik and Brown moved that the bill be amended, in Section 2, in item 1201-0100, by inserting at the end thereof the following:- "provided further, that the department shall institute a tax credit for entities engaged in the production of motion pictures; provided further, said tax credit shall be offered to only those entities that produce motion pictures in the Commonwealth; provided further, said tax credit shall include provisions to waive the sales tax on goods bought and used in the Commonwealth; provided further, said tax credit shall be comparable to tax incentives offered in other states; provided further, the commissioner shall report to the house and senate ways and means committees no later than September 15, 2005 on the status of the implementation of the tax credit; provided further, said tax credit shall be effective on January 1, 2006." **RULED OUT OF ORDER**

Floor Number: 3 Clerk Number: 47

#### FILM TAX CREDIT II

Messrs. Lees, Tisei, Tarr, Knapik and Brown moved that the bill be amended by inserting, after Section \_\_\_, the following new section:-

"SECTION \_\_\_. Chapter 64H of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by inserting thereafter the following new chapter:-

**Chapter 64H ½.**

## DEFINITIONS.

The following words and phrases when used in this section shall have the following meanings unless the context clearly indicates otherwise:

“Department” shall mean The Department of Revenue of the Commonwealth.

“Film” The term includes a feature film, a television series and a television show of 15 minutes or more in length, intended for a national audience. The term does not include a production featuring 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. The Massachusetts Film Bureau will establish specific guidelines together with a certification process that will guide the selection and evaluation of film and television projects that are eligible for the Film Production Tax Credit.

“Film Production Tax Credit” shall mean the credit provided under this Act for the production of the Film.

“Pass-Through Entity” shall mean a partnership taxable in the Commonwealth under M.G.L. c. 62, Section 17 or an S-corporation taxable under M.G.L. c. 62, Section 17a.

“Massachusetts Production Expense” shall mean a production expense for the Film; clearly and demonstrably incurred in the Commonwealth.

“Production Expense(s)” shall mean 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)” shall mean a Massachusetts Production Expense if at least 50% of the total production expenses of the Film are Massachusetts Production Expenses.

“Qualified Tax Liability” shall mean the liability for taxes imposed on any natural person or entity under M.G.L. c. 62 Or M.G.L. c. 63.

“Taxpayer” shall mean an entity engaged in the making of the Film, including but not limited to any partnership or S-corporation.

CREDIT FOR QUALIFIED FILM PRODUCTION EXPENSES.

(A) General Rule.--A Taxpayer who incurs a Qualified Film Production Expense in a taxable year shall be allocated a Film Production Tax Credit as provided in this Act.

(B) Amount of Film Production Tax Credit.--A Taxpayer shall receive a Film Production Tax Credit for the taxable year in the amount of 20% of the Qualified Film Production Expenses incurred in such year; provided, however, that the maximum amount of Film Production Tax Credits allocable to all Taxpayers in all years with respect to the Film shall not exceed the cumulative amount of \$2 million.

#### CARRYOVER, CARRYBACK, REFUND AND ASSIGNMENT OF CREDIT.

(A) General Rule.--If a Taxpayer cannot use the entire amount of the Film Production Tax Credit for the taxable year in which the Film Production Tax Credit first becomes available under Section 2 of this Act, then the excess may be carried over to succeeding taxable years and used as a credit against the Qualified Tax Liability of the Taxpayer for those taxable years. Each time that the Film Production Tax Credit is carried over to a succeeding taxable year, it shall be reduced by the amount that was used as a credit during the immediately preceding taxable year. The Film Production Tax Credit provided by this Act may be carried over and applied to succeeding taxable years for no more than five taxable years following the first taxable year for which the taxpayer was entitled to claim the credit.

(B) No Carryback.--A Taxpayer is not entitled to carry back or obtain a refund of an unused Film Production Tax Credit.

#### DETERMINATION OF QUALIFIED FILM PRODUCTION

Expenses.--In determining which Production Expenses are considered Qualified Film Production Expenses for purposes of computing the credit provided by this Act, the Department shall consider:

- (1) The location where the services are performed.
- (2) The residence or business location of the person or persons performing the service.
- (3) The location where Qualified Film Production Expenses are consumed.
- (4) Other factors established in regulations by the Department which are necessary for determination.

#### TIME LIMITATIONS.

(A) Taxpayer is not entitled to a Film Production Tax Credit for Qualified Film Production Expenses incurred in taxable years ending after December 31, 2006.

#### REGULATIONS.

The Department may promulgate regulations necessary for the implementation and administration of this Act.”

***RULED OUT OF ORDER***

Mr. Timilty moves that the bill (house 4252) be layed on the table

Ms. Creem and Mr. Timilty move that the bill (House 4252) be amended by striking out all after the enacting clause and inserting the following new text:-

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:—

(1)(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 15 per cent of the total aggregate payroll for people employed by a motion picture production company when total production costs incurred in the commonwealth are less than \$5,000,000. The credit shall be equal to 20 per cent of the total aggregate payroll for people employed by such motion picture production company when total production

Deleted: "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 this chapter or chapter 63. ¶

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costs incurred in the commonwealth equal or exceed \$5,000,000 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.

(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 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

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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 production shall not exceed \$10,000,000.

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(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.

**Deleted:** "Resident", (1) a natural person domiciled in the commonwealth, or (2) a natural person who is not domiciled in the commonwealth but who maintains a permanent place of abode in the commonwealth and spends in the aggregate more than 183 days of the taxable year in the commonwealth, including days spent partially in and partially out of the commonwealth. ¶

**Deleted:** "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 or chapter 62.

(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 15 per cent of the total aggregate payroll for persons employed by a motion picture production company when total production costs incurred in the commonwealth less than \$5,000,000 during the taxable year. The credit shall be equal to 20 per cent of the total aggregate payroll for persons employed by the production company when total production costs incurred in the commonwealth equal or exceed \$5,000,000 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 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

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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 production shall not exceed \$10,000,000.

(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"

Deleted: 7

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 chapter 64H of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by adding the following paragraph:--

(ww) all supplies, technical equipment and machinery used in conjunction with the production of a motion picture, as defined in section 6 of chapter 62, which would otherwise qualify for a credit as provided in said chapter or chapter 63; including, but not limited to, 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.

SECTION 5. Section 7 of Chapter 64I of the General Laws is hereby amended by adding at the end thereof the following new subsection:--

(f) The sale of all supplies, technical equipment and machinery used in conjunction with the production of a motion picture, as defined in section 6 of chapter 62, which would otherwise qualify for a credit as provided in said chapter or chapter 63; including, but not limited to, 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.

SECTION 6. 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 7. 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.

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SECTION 8. 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, 2009; 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.

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SECTION 9. The department of revenue shall, annually, issue a report detailing the amount of tax credit certificates issued to taxpayers pursuant to this act and shall provide an estimate of the cost to the commonwealth of the tax credits contained in this Act and shall file the report by December 31 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.

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SECTION 10. Section 5 shall take effect on November 1, 2005 and shall cease to be in effect on December 31, 2010.

SECTION 10. Except as otherwise specified, this act shall be effective for tax years beginning on or after January 1, 2005 and before January 1, 2011, but credits allowed pursuant to this act may be carried forward pursuant to sections 1 and 2 after January 1, 2011.