

S2187

SENATE 2187

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# SENATE, No. 2187

September 14, 2005

The committee on Senate Ways and Means to whom was referred the House Bill providing incentives to the motion picture industry (House, No. 4252), report recommending that the same ought to pass, with an amendment, substituting a new text with the same title (Senate, No. 2187).

Therese Murray,  
For the committee.

## The Commonwealth of Massachusetts



In the Year Two Thousand and Five.

### 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 shall not include a production featuring news, current events, weather and financial market reports, talk show, game show, sporting event, 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 engaged in the business of producing motion pictures, as defined in this section. The term shall not include any company at least 5 per cent owned or controlled by, or affiliated with, any company or person in default on a loan made by the commonwealth or a loan guaranteed by the commonwealth.

“Massachusetts production expense”, a production expense for a 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 a 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; location fees and the cost of purchase or rental of facilities or 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.

“Taxpayer”, an entity engaged in the making of a film, including a person, firm, partnership, or other

entity subject to the income tax imposed by this chapter or chapter 63.

(2) A taxpayer shall be allowed a credit against taxes imposed by this chapter for any Massachusetts production expense within any consecutive 12-month period if (i) at least 50 per cent of the total production expenses are incurred in the commonwealth or (ii) at least 50 per cent of the total principal photography days of the film take place in the commonwealth. The credit shall be equal to 15 per cent of the Massachusetts production expense when the total production costs incurred in the commonwealth are less than \$5,000,000 during the taxable year. The credit shall be equal to 20 per cent of the Massachusetts production expense when the total production costs incurred in the commonwealth equal or exceed \$5,000,000 but total less than \$10,000,000 during the taxable year. The credit shall be equal to 25 per cent of the Massachusetts production expense when the total production costs incurred in the commonwealth equal or exceed \$10,000,000 during the taxable year. For the purposes of this paragraph, the term "Massachusetts production expense" shall not include the salary of any employee whose salary is equal to or greater than \$1,000,000.

(3) The tax credit shall be taken against 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.

(4)(i) All or any portion of tax credits issued in accordance with this subsection may be transferred, sold or assigned to other 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. Any tax credit transferred, sold or assigned shall not reduce the excise to less than the amount due under subsection (b) of section 32, subsection (b) of section 39, or section 67 of chapter 63. The limitation provided under section 32C of chapter 63 shall also apply.

(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.

(5) The total amount of tax credits provided under this subsection for any 1 motion picture shall not exceed \$10,000,000.

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

SECTION 2. Chapter 63 of the General Laws is hereby amended by inserting after section 38S, as so appearing, 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:

"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 shall not include a production featuring news, current events, weather and financial market reports, talk show, game show, sporting event, 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 engaged in the business of producing motion pictures, as defined in this section. The term shall not include any company at least 5 per cent owned or controlled by, or affiliated with, 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 a 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 a 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; location fees and the cost of purchase or rental of facilities or 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.

“Taxpayer”, an entity engaged in the making of a film, including a person, firm, partnership or other entity subject to the income tax imposed by chapter 62 or this chapter.

(b) A taxpayer shall be allowed a credit against taxes imposed by this chapter for any Massachusetts production expense within any consecutive 12-month period if: (i) at least 50 per cent of the total production expenses are incurred in the commonwealth; or (ii) at least 50 per cent of the total principal photography days of the film take place in the commonwealth. The credit shall be equal to 15 per cent of the Massachusetts production expense when the total production costs incurred in the commonwealth are less than \$5,000,000 during the taxable year. The credit shall be equal to 20 per cent of the

Massachusetts production expense when the total production costs incurred in the commonwealth equal or exceed \$5,000,000 but total less than \$10,000,000 during the taxable year. The credit shall be equal to 25 per cent of the Massachusetts production expense when the total production costs incurred in the commonwealth equal or exceed \$10,000,000 during the taxable year. For the purposes of this paragraph, the term "Massachusetts production expense" shall not include the salary of any employee whose salary is equal to or greater than \$1,000,000.

(c) The credit allowed under this section for any taxable year shall not reduce the excise to less than the amount due under subsection (b) of section 32, subsection

(b) of section 39, or section 67. Any unused portion of the credit may be carried forward by the taxpayer to any of the 5 subsequent taxable years.

(d)(1) All or any portion of tax credits issued in accordance with this subsection 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 tax credit transferred, sold or assigned shall not reduce the excise to less than the amount due under subsection (b) of section 32, subsection (b) of section 39, or section 67. The limitation provided under section 32C shall also apply. 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 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 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.

(e) The total amount of tax credits provided under this subsection for any 1 motion picture shall not exceed \$10,000,000.

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

SECTION 3. Chapter 64G of the General Laws is hereby amended by adding the following section:--

Section 13. Notwithstanding any general or special law to the contrary, an excise shall not be imposed, pursuant to this chapter, upon the transfer or occupancy of a room in a hotel, lodging house or motel if the occupant: (i) is an employee of a motion picture production company, as defined in section 6 of chapter 62; (ii) occupies the room for 20 or more consecutive days; and (iii) demonstrates that during the 20-day period the occupant is actively working on the making or producing of a motion picture by a motion picture production company qualifying for a tax credit under section 6 of chapter 62.

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 qualifies 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 supplies, technical equipment and machinery used in conjunction with the production of a motion picture, as defined in section 6 of chapter 62, which qualifies 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. This act shall be effective for tax years beginning on or after January 1, 2006.

S2187

~~HOUSE 4252~~

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

(Summary reflects text as redrafted.) S2187

**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)

**SENATE, No. 2187**

September 14, 2005

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“Massachusetts production expense”, a production expense for a 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 a 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; location fees and the cost of purchase or rental of facilities or 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.

“Taxpayer”, an entity engaged in the making of a film, including a person, firm, partnership or other

entity subject to the income tax imposed by this chapter or chapter 63.

(2) A taxpayer shall be allowed a credit against taxes imposed by this chapter for any Massachusetts production expense within any consecutive 12-month period if (i) at least 50 per cent of the total production expenses are incurred in the commonwealth or (ii) at least 50 per cent of the total principal photography days of the film take place in the commonwealth. The credit shall be equal to 15 per cent of the Massachusetts production expense when the total production costs incurred in the commonwealth are less than \$5,000,000 during the taxable year. The credit shall be equal to 20 per cent of the Massachusetts production expense when the total production costs incurred in the commonwealth equal or exceed \$5,000,000 but total less than \$10,000,000 during the taxable year. The credit shall be equal to 25 per cent of the Massachusetts production expense when the total production costs incurred in the commonwealth equal or exceed \$10,000,000 during the taxable year. For the purposes of this paragraph, the term "Massachusetts production expense" shall not include the salary of any employee whose salary is equal to or greater than \$1,000,000.

(3) The tax credit shall be taken against 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.

(4)(i) All or any portion of tax credits issued in accordance with this subsection may be transferred, sold or assigned to other 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. Any tax credit transferred, sold or assigned shall not reduce the excise to less than the amount due under subsection (b) of section 32, subsection (b) of section 39, or section 67 of chapter 63. The limitation provided under section 32C of chapter 63 shall also apply.

(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.

(5) The total amount of tax credits provided under this subsection for any 1 motion picture shall not exceed \$10,000,000.

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

SECTION 2. Chapter 63 of the General Laws is hereby amended by inserting after section 38S, as so appearing, the following section:--

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Massachusetts production expense when the total production costs incurred in the commonwealth equal or exceed \$5,000,000 but total less than \$10,000,000 during the taxable year. The credit shall be equal to 25 per cent of the Massachusetts production expense when the total production costs incurred in the commonwealth equal or exceed \$10,000,000 during the taxable year. For the purposes of this paragraph, the term "Massachusetts production expense" shall not include the salary of any employee whose salary is equal to or greater than \$1,000,000.

(c) The credit allowed under this section for any taxable year shall not reduce the excise to less than the amount due under subsection (b) of section 32, subsection

(b) of section 39, or section 67. Any unused portion of the credit may be carried forward by the taxpayer to any of the 5 subsequent taxable years.

(d)(1) All or any portion of tax credits issued in accordance with this subsection 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 tax credit transferred, sold or assigned shall not reduce the excise to less than the amount due under subsection (b) of section 32, subsection (b) of section 39, or section 67. The limitation provided under section 32C shall also apply. 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 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 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.

(e) The total amount of tax credits provided under this subsection for any 1 motion picture shall not exceed \$10,000,000.

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SECTION 3. Chapter 64G of the General Laws is hereby amended by adding the following section:--

Section 13. Notwithstanding any general or special law to the contrary, an excise shall not be imposed, pursuant to this chapter, upon the transfer or occupancy of a room in a hotel, lodging house or motel if the occupant: (i) is an employee of a motion picture production company, as defined in section 6 of chapter 62; (ii) occupies the room for 20 or more consecutive days; and (iii) demonstrates that during the 20-day period the occupant is actively working on the making or producing of a motion picture by a motion picture production company qualifying for a tax credit under section 6 of chapter 62.

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 qualifies 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 supplies, technical equipment and machinery used in conjunction with the production of a motion picture, as defined in section 6 of chapter 62, which qualifies for a credit as provided in said

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SECTION 6. This act shall be effective for tax years beginning on or after January 1, 2006.