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An Act Requiring a Dynamic Fiscal Analysis of Changes to Visual Media Production Tax Credits and Reimbursements

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, during the Second Regular Session of the 125th Legislature, the Joint Standing Committee on Taxation passed Resolve 2011, chapter 114 directing the Department of Administrative and Financial Services, Bureau of Revenue Services to develop a pilot project for a tax simulation model for state dynamic fiscal analysis; and

Whereas, the pilot project was not completed and final reports not submitted; and

Whereas, this legislation seeks to perform dynamic fiscal analyses of proposed changes to the certified visual media production tax credit using a 3rd-party independent reviewer; and

Whereas, the changes made to the certified visual media production tax credit and reimbursement are dependent upon the outcome of the pilot project and cannot occur before the pilot project is completed; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

PART A

Sec. A-1. Pilot project for a tax simulation model for state dynamic fiscal analysis. The Department of Economic and Community Development, referred to in this section as "the department," shall undertake a pilot project to develop and evaluate a tax simulation model for state dynamic fiscal analysis, which is analysis to estimate the effect a change in the tax laws would have on state revenue as well as the fiscal impact of the changes in taxpayer behavior and overall economic activity that may occur due to the tax law change. The department may enter into a memorandum of understanding with the University of Maine to develop and evaluate the pilot project model for a state dynamic fiscal analysis of the impact of the changes proposed in this Act to the certified visual media production credit established in the Maine Revised Statutes, Title 36, section 5219-Y and the visual media production reimbursement established in Title 36, section 6902. The Department of Administrative and Financial Services, Maine Revenue Services may disclose information otherwise protected under Title 36, section 191 to specific University of Maine staff members identified in the memorandum of understanding for the purpose of developing and evaluating the pilot project model for state dynamic fiscal analysis of the changes proposed in this Act to the certified visual media production credit and the

visual media production reimbursement. The memorandum of understanding must include a completion date of August 1, 2014 and a requirement to report the findings of the pilot project to the department, Maine Revenue Services and the Office of Fiscal and Program Review.

Sec. A-2. Findings and report. No later than August 15, 2014, the Department of Administrative and Financial Services, Maine Revenue Services and the Office of Fiscal and Program Review each shall evaluate the completed pilot project model under section 1 and submit a joint report to the Joint Standing Committee on Taxation that includes the findings of the evaluation and a determination of whether the changes proposed in this Act to the certified visual media production credit and the visual media production reimbursement will have a negative or a positive fiscal impact on state revenue. Maine Revenue Services and the Office of Fiscal and Program Review also shall file a copy of the report, including the determination of fiscal impact, with the Secretary of State and the Office of the Revisor of Statutes.

PART B

Sec. B-1. 5 MRSA §13090-L, sub-§§1, 3, 5 and 7, as amended by PL 2009, c. 470, §1, are further amended to read:

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

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

- A. Provide the names of the principals involved in the visual media production and contact information for them;
- B. Provide a certificate of insurance for the visual media production;
- C. Provide financial information that demonstrates that the visual media production is fully financed and that at least \$75,000 of visual media production expense will be incurred for the visual media production certified in accordance with this subsection;
- D. Provide data demonstrating that the visual media production will benefit the people of the State by increasing opportunities for employment and will strengthen the economy of the State;
- E. Agree to include, in the certified visual media production, an on-screen credit for the State of Maine. The exact wording and size of that credit must be determined in rules adopted by the Maine State Film Office and the department. The Maine State Film Office or the department may, at its discretion, exempt visual media productions from this requirement. Rules adopted pursuant to this paragraph are routine technical rules as defined in chapter 375, subchapter 2-A;

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

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

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

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

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

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

Sec. B-2. 5 MRSA §13090-M, sub-§4, ¶E, as enacted by PL 2011, c. 372, §1, is amended to read:

E. A signed agreement with the department provides that the project or production will not be the basis for a claim for an income tax credit under Title 36, section 5219-Y or reimbursement under Title 36, chapter 919-A.

Sec. B-3. 36 MRSA §191, sub-§2, ¶MM, as amended by PL 2009, c. 652, Pt. A, §51, is further amended to read:

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

Sec. B-4. 36 MRSA §5219-Y, as amended by PL 2011, c. 240, §37, is repealed.

Sec. B-5. 36 MRSA §6901, sub-§2, as amended by PL 2011, c. 240, §45 and affected by §47, is further amended to read:

2. Certified production wages. "Certified production wages" means wages subject to withholding under section 5250, subsection 1 that are paid by a visual media production company for work on a certified visual media production. "Certified production wages" includes an amount paid to a temporary employee-leasing company for personal services rendered in this State by a leased employee in connection with a certified visual media production and an amount paid for the services of a performing artist working in the State in connection with a certified visual media production and other contractual payments for the services of individuals working in the State. "Certified production wages" includes only the first ~~\$50,000~~\$100,000 paid to or with respect to a particular individual for personal services rendered in connection with a particular certified visual media production.

Sec. B-6. 36 MRSA §6902, sub-§1, as amended by PL 2011, c. 240, §46, is further amended to read:

1. Generally. A visual media production company is allowed a reimbursement equal to ~~12%~~25% of certified production wages paid to or with respect to an individual who is a resident of Maine and 10% of certified production wages paid to or with respect to an individual who is not a resident of Maine.

Sec. B-7. 36 MRSA §6902, sub-§1-A is enacted to read:

1-A. Reimbursement for expenses. A visual media production company is allowed a reimbursement in an amount equal to 20% of its nonwage visual media production expenses incurred with respect to a certified visual media production if the visual media production company has visual media production expenses of \$75,000 or more with respect to that certified visual media production. For purposes of this section, "nonwage visual media production expenses" has the same meaning as in Title 5, section 13090-L, subsection 2-A, paragraph F, except that "nonwage visual media production expenses" does not include certified production wages or any amount that would be included in certified production wages but for the \$100,000 limit provided by section 6901, subsection 2.

Sec. B-8. Contingent effective date. This Part takes effect only if the Department of Administrative and Financial Services, Maine Revenue Services and the Office of Fiscal and Program Review jointly report to the Joint Standing Committee on Taxation that the result of the dynamic fiscal analysis pilot project conducted pursuant to Part A is a positive fiscal impact on state revenue. Maine Revenue Services and the Office of Fiscal and Program Review shall provide a copy of their joint report and certify to the Secretary of State and the Office of the Revisor of Statutes the determination as to the positive or negative fiscal impact on state revenue of the pilot project conducted pursuant to Part A.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

SUMMARY

Part A of this bill creates a pilot project to develop and evaluate a tax simulation model for state dynamic fiscal analysis of potential changes to the certified visual media production credit established in the Maine Revised Statutes, Title 36, section 5219-Y and the visual media production reimbursement established in Title 36, section 6902. The Department of Economic and Community Development is permitted to enter into a memorandum of understanding with the University of Maine to conduct the pilot project. The Department of Administrative and Financial Services, Maine Revenue Services and the Office of Fiscal and Program Review are required to evaluate the findings of the pilot project and to jointly report to the Joint Standing Committee on Taxation whether the proposed changes to the visual media production credit and reimbursement would result in a negative or positive fiscal impact.

Part B of this bill repeals the certified visual media production credit and instead increases the reimbursement amount for certified production wages paid from 12% to 25% for residents of Maine, increases the cap on the reimbursement of wages from \$50,000 to \$100,000 and provides for a reimbursement of 20% of nonwage visual media production expenses. These changes take effect only if the result of the joint finding of Maine Revenue Services and the Office of Fiscal and Program Review is that the changes proposed in this Part would result in a positive fiscal impact on state revenue.