

SENATE
STATE OF MINNESOTA
EIGHTY-EIGHTH LEGISLATURE

S.F. No. 1434

(SENATE AUTHORS: COHEN)

DATE	D-PG	OFFICIAL STATUS
03/18/2013	1180	Introduction and first reading Referred to Taxes

A bill for an act

relating to taxation; individual income, corporate franchise, sales; providing a credit for a qualified film production investment; providing an exemption for qualifying film production purchases; amending Minnesota Statutes 2012, section 297A.67, by adding a subdivision; proposing coding for new law in Minnesota Statutes, chapter 290.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. **[290.0682] FILM PRODUCTION INVESTMENT CREDIT.**

Subdivision 1. **Definitions.** (a) For the purposes of this section, the following terms have the meanings given.

(b) "Qualifying film production" means a motion picture that is certified by the commissioner as made wholly in Minnesota.

(c) "Qualified investment" means an amount of cash used to pay qualified production expenses that is provided by an investor who does not have any financial interest in the motion picture or the production company responsible for filming the motion picture.

(d) "Motion picture" means a feature-length film, video, digital media project, television series defined as a season not to exceed 27 episodes, or commercial made in the state, in whole or in part, for theatrical or television viewing or as a television pilot. Motion picture shall not include a production featuring news, current events, weather and financial market reports, talk shows, game shows, sporting events, awards shows, or other gala events; a production whose sole purpose is fund-raising; a long-form production that primarily markets a product or service; or a production containing obscene material or performances.

(e) "Motion picture production company" means a company, including its subsidiaries, engaged in the business of producing motion pictures, videos, television

2.1 series, or commercials intended for a theatrical release or for television viewing. Motion
2.2 picture production company shall not mean or include any company that is more than 25
2.3 percent owned, affiliated, or controlled by any company or person that is in default on a
2.4 loan made by the state or a loan guaranteed by the state.

2.5 (f) "Principal photography" means the phase of production during which the
2.6 motion picture is actually filmed. Principal photography shall not include preproduction
2.7 or postproduction.

2.8 (g) "Production expense" or "production cost" means preproduction, production,
2.9 and postproduction expenditures directly incurred in the production of a motion picture.
2.10 Production expenses or costs shall include wages and salaries paid to individuals
2.11 employed in the production of the motion picture; the costs of set construction and
2.12 operation, editing and related services, photography, sound synchronization, lighting,
2.13 wardrobe, makeup, and accessories; film processing, transfer, sound mixing, special and
2.14 visual effects; music; location fees; and the cost of purchase or rental of facilities and
2.15 equipment or any other production expense as may be determined by the commissioner to
2.16 be a qualified production expense. Production expenses or costs shall not include costs
2.17 incurred in marketing or advertising a motion picture; costs related to the transfer of tax
2.18 credits; or amounts paid to persons or businesses as a result of their participation in profits
2.19 from the exploitation of the production.

2.20 Subd. 2. **Credit allowed.** (a) A taxpayer engaged in making a motion picture
2.21 shall be allowed a credit against the taxes imposed by this chapter for the employment of
2.22 persons in Minnesota in connection with the filming or production of one or more motion
2.23 pictures in the state within any consecutive 12-month period. The credit shall be equal to
2.24 25 percent of the total aggregate payroll paid by a motion picture production company that
2.25 constitutes Minnesota source income, when total production costs incurred in the state
2.26 equal or exceed \$100,000 during the taxable year. For purposes of this subdivision, "total
2.27 aggregate payroll" shall not include the salary of any employee whose salary is equal to or
2.28 greater than \$1,000,000.

2.29 (b) A taxpayer shall be allowed an additional credit against the taxes imposed by
2.30 this chapter equal to 25 percent of all Minnesota production expenses, not including the
2.31 payroll expenses used to claim a credit pursuant to paragraph (a), where the motion picture
2.32 is also eligible for a credit pursuant to paragraph (a), and either: (1) Minnesota production
2.33 expenses exceed 50 percent of the total production expenses for a motion picture; or (2) at
2.34 least 50 percent of the total principal photography days of the film take place in the state.

2.35 Subd. 3. **Certification of credits.** (a) Before making a qualified investment,
2.36 taxpayers must apply to the Department of Revenue for a film production investment

3.1 credit certificate. The application must be in the form and made under the procedures
3.2 specified by the commissioner. Credit certificates must only be issued for qualifying
3.3 investments in qualifying film productions.

3.4 (b) Certificates must not be issued for more than \$10,000,000 in film production
3.5 investment credits per year.

3.6 Subd. 4. **Carryover; transfers; refunds.** (a) The tax credit shall be taken against
3.7 the taxes imposed under this chapter and shall, at the election of the taxpayer, be
3.8 refundable to the extent provided for in paragraph (d). Any amount of the tax credit that
3.9 exceeds the tax due for a taxable year may be carried forward by the taxpayer to any of
3.10 the five subsequent taxable years.

3.11 (b) All or any portion of tax credits issued under this subdivision may be transferred,
3.12 sold, or assigned to other taxpayers with tax liabilities under this chapter. Any tax credit
3.13 that is transferred, sold, or assigned and taken against taxes imposed by this chapter shall
3.14 not be refundable to the transferee, buyer, or assignee. A person or corporate taxpayer
3.15 must not transfer a credit more than once in a 12-month period. Any amount of the tax
3.16 credit that exceeds the tax due for a taxable year may be carried forward by the transferee,
3.17 buyer, or assignee to any of the five subsequent taxable years from which a certificate is
3.18 initially issued by the Department of Revenue.

3.19 (c) An owner, transferee, or assignee desiring to make a transfer, sale, or assignment
3.20 allowed under paragraph (b) shall submit to the commissioner a statement that describes
3.21 the amount of tax credit for which the transfer, sale, or assignment of tax credit is eligible.
3.22 The statement must be in the form and manner prescribed by the commissioner. The
3.23 commissioner shall provide to the taxpayer a certificate of eligibility to transfer, sell, or
3.24 assign the tax credits. The commissioner shall not issue a certificate to a taxpayer that has an
3.25 outstanding tax obligation with the state in connection with any motion picture for any prior
3.26 taxable year. A tax credit shall not be transferred, sold, or assigned without a certificate.

3.27 (d) At the written election of a taxpayer entitled to a credit under paragraph (a), the
3.28 commissioner shall apply the credit against the liability of the taxpayer as determined on its
3.29 return, as first reduced by any other available credits, and shall then refund to the taxpayer
3.30 90 percent of the balance of the credits. The commissioner may require substantiation of a
3.31 taxpayer's claim for a refund under paragraph (a) before payment of the refund. No interest
3.32 shall accrue on a refund before the commissioner's receipt of the substantiation request.

3.33 Subd. 5. **Limitations.** Notwithstanding any other provision of this section,
3.34 aggregate salary, and compensation amounts, including all per diems, housing, and other
3.35 allowances, paid to, or for the services of, an individual shall not qualify for the credit
3.36 under this section to the extent that the amounts exceed \$2,000,000.

4.1 **EFFECTIVE DATE.** This section is effective for taxable years beginning after
4.2 December 31, 2012.

4.3 Sec. 2. Minnesota Statutes 2012, section 297A.67, is amended by adding a subdivision
4.4 to read:

4.5 Subd. 33. **Film productions.** (a) Sales of tangible personal property to a qualifying
4.6 motion picture production company, as defined under section 290.0682, subdivision 1,
4.7 paragraph (e), are exempt, provided the qualifying motion picture production company
4.8 spends at least \$50,000 within the state in connection with the filming or production of
4.9 one or more motion pictures in the state within any consecutive 12-month period.

4.10 (b) Any motion picture production company that intends to film all, or parts of, a
4.11 motion picture in the state and qualifies for the exemption provided by this subdivision
4.12 shall provide an estimate of total expenditures to be made in the state in connection with
4.13 the filming or production of the motion picture. The estimate of expenditures shall be filed
4.14 with the commissioner prior to the commencement of filming in the state and is required
4.15 for the issuance of an exemption certificate. Any qualifying motion picture production
4.16 company that has been approved that fails to expend \$50,000 within a consecutive
4.17 12-month period shall be liable for the sales taxes that would have been paid had the
4.18 approval not been granted. The sales taxes shall be considered due as of the date that
4.19 taxable expenditures were made.

4.20 **EFFECTIVE DATE.** This section is effective for sales and purchases made after
4.21 June 30, 2013.