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April 30, 2009 Joint Committee on Finance Paper #251

Film Production Tax Credits Program Changes (Commerce -- Economic Development and General Fund Taxes)

[LFB 2009-11 Budget Summary: Page 181, #5 and Page 263, #15]

CURRENT LAW

Provisions of 2005 Wisconsin Act 483 created both a film production services tax credit and a film production investment tax credit under the state individual income and corporate income and franchise taxes. For the purposes of claiming the tax credits, Commerce is required to: (a) accredit productions; (b) determine the amount of expenditures that are directly used to produce an accredited production; and (c) certify expenses that are related to establishing a film production company in Wisconsin.

GOVERNOR

Sunset the film production services and film production company investment tax credits by disallowing any tax credit claims for tax years beginning after December 31, 2008. Film tax credits claimed for tax years beginning before January 1, 2009, could be carried forward to tax years beginning after December 31, 2008. To replace the film tax credits, a film project grants program would be created with annual funding of $470,000 GPR. Commerce would be authorized to award a film project grant for a film-related or video-related project that created long-term jobs in the state, and would be required to promulgate administrative rules necessary to administer the program. The sum-sufficient appropriation for refundable film tax credits under shared revenue and property tax relief would be reduced from the base level estimate of $5,000,000 GPR annually to $0.

DISCUSSION POINTS

1. The film production services tax credit consists of three components. An eligible taxpayer can claim as a credit against the individual income and corporate income and franchise taxes any of the following.

a. An amount equal to 25% of the eligible salary or wages paid by a claimant to the claimant's employees, up to a maximum credit of $25,000 per employee, for services rendered in Wisconsin to produce an accredited production and paid to employees who were residents of Wisconsin at the time they were paid. The salary and wages have to be paid for services directly incurred to produce the accredited production. The tax credit cannot be claimed for the salaries of the two highest paid employees. Unused credit amounts can be carried forward up to 15 years to offset future tax liabilities.

b. An amount equal to 25% of production expenses paid by the claimant to produce the accredited production. Amounts not used to offset tax liabilities are refundable.

c. An amount equal to the sales and use taxes paid by the claimant on the purchase of tangible personal property and taxable services that are used directly in producing an accredited production in the state, including all stages of production, from the final script stage to the distribution of the finished production. Unused credit amounts can be carried forward up to 15 years to offset future tax liabilities.

Partnerships, LLCs, and tax option corporations may not claim the tax credit, but eligibility for, and the amount of credit is determined based on the investments of the entity. The partnership, LLC, or tax-option corporation must compute the amount of credit that may be claimed by each partnership, member or shareholder and provide that information to them. Partners, members of LLCs, and shareholders of tax-option corporations may claim the tax credit in proportion to their ownership interest, or as specially allocated in organizational documents.

2. In order to claim a tax credit, the claimant is required to file an application with the Department, and Commerce is required to approve the application and accredit the production for the purpose of claiming the tax credit. A potential claimant must submit a separate accreditation application for each production. The Department issues a written notice of accreditation.

In determining whether to accredit a production, Commerce is required to consider whether all of the following are likely:

a. The production would not occur in Wisconsin without the tax benefits provided through the film production tax credits.

b. The production would enhance economic development in Wisconsin.

c. The production would enhance the potential for increasing the film, video, or electronic game industry in Wisconsin.

d. The production would not hurt the reputation of the state of Wisconsin.

Commerce is authorized to revoke an accreditation, if supporting information submitted to the Department by the claimant is found to be inaccurate or false. If Commerce accredits a production, it must determine the amount of production expenditures that are eligible for the tax credit. To assist the Department in its determination, the claimant must submit, in writing, all of the following:

a. A list and description of the production expenditures incurred during the tax year.

b. A list of the salary or wages that were paid to eligible employees, and a description of the corresponding employee services rendered to the accredited production.

c. Attestation that the employees who received the salary or wages met Department of Revenue residency criteria, at the time of being paid.

d. Verification that the $50,000 or $100,000 salary and wages threshold based on production time was exceeded.

e. An itemized list of the sales or use taxes paid in the tax year, corresponding to an itemized list of purchased tangible personal property and taxable services that were used directly in producing an accredited production, including all stages from the final script stage to the distribution of the finished production.

f. Demonstration that the claimant either owns the copyright in the accredited production, or has contracted directly with the copyright owner or a person acting in the owner's behalf.

g. A viable plan for commercial distribution of the finished production.

h. Any subsequent clarification requested by Commerce.

Commerce determines the following amounts:

a. The production expenditures that were incurred during the tax year.

b. The salary or wages that were paid during the tax year by the claimant to those employees who met the following criteria: (1) rendered services in Wisconsin to produce an accredited production; and (2) were residents of the state at the time they were paid.

c. The eligible sales or use taxes which were paid during the tax year.

Commerce is required to notify the claimant in writing of the eligible production expenditures. The Department may increase the amount of production expenditures that are eligible for the tax credit if the claimant submits adequate written justification for the increase. Commerce may decrease the amount of production expenditures after determining that the information submitted by the claimant, on which determination of eligibility was based, was inaccurate or significantly misleading. The Department is required to notify the claimant, in writing of any increase or decrease in eligible production expenditures. Commerce is also required to notify DOR of every production that is accredited, and of the amount of production expenses that are eligible for tax credits.

3. "Accredited production" is defined as a film, video, electronic game, broadcast advertisement, or television production, as approved by the Department of Commerce, for which aggregate salary and wages included in the cost of production for the period ending 12 months after the month in which the principal filming or taping of the production begins exceeds $100,000 for a production that is 30 minutes or longer, or $50,000 for a production that is less than 30 minutes. "Accredited production" does not include any of the following, regardless of production costs:

a. News, current events, or public programming, or a program that includes weather or market reports.

b. A talk show.

c. A production with respect to a questionnaire or contest.

d. A sports event or sports activity.

e. A gala presentation or awards show.

f. A finished production that solicits funds.

g. A production for which the production company is required under federal law to maintain records with respect to performers in programs with sexually explicit content.

h. A production produced primarily for industrial, corporate, or institutional purposes.

Public programming of a civic or governmental function is not eligible for becoming an accredited production.

4. "Production expenditures" means any expenditures that were incurred in the state and directly used to produce an accredited production, including expenditures for set construction and operation, wardrobes, make-up, clothing accessories, photography, sound recording, sound synchronization, sound mixing, lighting, editing, film processing, film transferring, special effects, visual effects, renting or leasing facilities or equipment, renting or leasing motor vehicles, food, lodging, and any other similar expenditure as determined by Commerce. "Production expenditures" also include expenditures for (a) music that is performed, composed, or recorded by a musician who is a resident of the state, or published or distributed by an entity that has its headquarters in the state; (b) air travel that is purchased from a travel agency or company that has its headquarters in the state; and (c) insurance that is purchased from an insurance agency or company that has its headquarters in the state. A travel promotion that addresses a sports event or sports activity is eligible for

accreditation while a sports event or activity that is exclusively competitive in nature is not eligible. "Production expenditures" do not include expenditures for the marketing and distribution of an accredited production.

An "eligible claimant" is a film production company that operates an accredited production in the state. The company must own the copyright in the accredited production, or have contracted directly with the copyright owner, or a person acting on the owner's behalf, and the company must have a viable plan as determined by Commerce for the commercial distribution of the finished production.

5. An eligible claimant can claim as a credit against individual income and corporate income and franchise taxes for the first three years that the claimant does business in the state as a film production company an amount that equals 15% of the following that the claimant paid in the tax year to establish a film production company in Wisconsin:

a. The purchase of depreciable, tangible personal property. The claimant must purchase the tangible personal property after December 31, 2007, and at least 50% of the property's use must be in the claimant's business as a film production company.

b. The amount expended to construct, rehabilitate remodel or repair real property. A claimant can claim the credit, if the claimant began the physical work of construction, rehabilitation, remodeling, or repair, or any demolition or destruction in preparation for the physical work, after December 31, 2007, and if the completed project is placed in service after December 31, 2007. A claimant can also claim the credit for an amount expended to acquire real property if the property is not previously owned property, and if the claimant acquires the property after December 31, 2007, and if the completed project is placed in service after December 31, 2007.

Unused tax credit amounts can be carried forward up to 15 years to offset future tax liability.

Partnerships, LLCs, and tax option corporations may not claim the tax credit, but eligibility for, and the amount of credit is determined based on the investments of the entity. The partnership, LLC, tax-option corporation must compute the amount of credit that may be claimed by each partnership, member or shareholder and provide that information to them. Partners, members of LLCs, and shareholders of tax-option corporations may claim the tax credit in proportion to their ownership interest, or as specially allocated in organizational documents.

6. In order to claim a film production company investment tax credit, the Department of Commerce must certify, in writing, that the credits claimed were for expenses related to establishing a film production company in the state. To obtain the Department's preliminary approval of expenses for establishing a film production company, a potential claimant is required to submit, in writing, the following:

a. A valid, department-prescribed application form.

b. A preliminary, estimated list of expenses.

c. A description of how the estimated expenses will relate to establishing a film production company in Wisconsin.

d. Documentation showing the expenses conform to statutory eligibility requirements.

A potential claimant must provide any subsequent clarification requested by Commerce.

In determining whether to issue a preliminary approval of production company investment expenditures, Commerce must consider whether all of the following are likely:

a. The film production company would not be established in Wisconsin without the tax benefits provided by the credits.

b. The film production company would enhance economic development in Wisconsin.

c. The film production company would enhance the potential for increasing the film, video, or electronic game industry in Wisconsin.

If the Department determines that the expenses are likely to comply with statutory eligibility requirements, and that the film production company is likely to meet the conditions listed in a. to c., above, Commerce is required to issue a preliminary approval to the potential claimant. In order to obtain final certification of production company investment expenditures, and prior to applying for the tax credits, the claimant must submit to Commerce, a finalized, incurred list of expenses, along with an explanation for any expenses that differ from the list submitted for preliminary approval. The Department is required to certify in writing to the claimant, the expenses that Commerce determines are related to establishing a film production company.

The Department may increase the amount of production expenditures that are eligible for the tax credit if the claimant submits adequate written justification for the increase. Commerce may decrease the amount of production expenditures after determining that the information submitted by the claimant, on which determination of eligibility was based, was inaccurate or significantly misleading. The Department is required to notify the claimant, in writing of any increase or decrease in eligible production expenditures. Commerce is also required to notify DOR of the amount of expenses that are certified as eligible for tax credits.

7. "Film production company" is defined as an entity that creates films, videos, electronic games, broadcast advertisement, or television productions, not including the productions specifically excluded under the definition of "accredited production" used for the film production services tax credit. "Physical work" does not include preliminary activities such as planning, designing, securing financing, researching, developing specifications, or stabilizing property to

prevent deterioration. "Previously owned property" means real property that the claimant or a related person owned during the two years prior to doing business in the state as a film production company, and for which the claimant could not deduct a loss from the sale of the property to, or an exchange of the property with, the related person as defined under the federal IRC. "Incurred" means funds equal to the total cost have been disbursed by a potential claimant.

8. In 1997, Canada enacted film incentives legislation that, combined with a weak Canadian dollar, started attracting film productions that would otherwise likely have taken place in southern California and elsewhere in the U.S. Eventually, a multi-billion dollar movie industry developed in Canada, as movies that could have been made in the U.S. were, for financial reasons, no longer being made in the U.S.. As a result, "runaway film production" became a major economic development issue.

Individual states responded by attempting to compete for film productions. Hawaii enacted a film program in 2000 that primarily provided grants and loans to local filmmakers. However, Oklahoma was the first state to establish significant tax incentives for filmmaking. In May, 2001, the Compete with Canada Film Act was signed into law. Under its provisions, production companies could claim either a sales tax exemption for eligible purchases or a 15% rebate on eligible spending in Oklahoma. In 2002, Louisiana enacted the Motion Picture Incentive Act that provided a 10% state tax credit to productions that spent more than $300,000 on films, TV shows, or videos in Louisiana. The credit increased to 15% for production costs of $8 million or more. In 2003, the film tax credit was made transferable, allowing producers to sell their credits to other taxpayers. This made the tax incentive more attractive because many production companies not based in the state did not have large state tax liabilities. Making the credits transferable allowed producers to recoup more production costs than would otherwise be the case

In 2003 New Mexico enacted its film incentive program. The state offers a refundable tax credit equal to 25% of all production expenditures, including the salaries and wages of New Mexico residents, that is subject to state taxation. The state has a Film Investment Loan Program that provides interest-free loans of up to $15 million for each film or television project of $2 million or more. There is also a workforce training program that reimburses wages for certain on-the-job training of New Mexico residents in some productions.

By 2005, more than 30 states had some type of film production incentives. In response to the increased competition, Louisiana increased its tax credit to 25% of in-state expenditures for projects with expenditures exceeding $300,000. An additional 10% credit can be claimed based on the number of Louisiana residents hired on projects, with no salaries exceeding $1 million. The total credit amount is limited to $25 million for each project. The state also provides a 40% credit for movie industry infrastructure investments.

In 2006, Connecticut enacted a 30% tax credit for film production expenses and an infrastructure credit of between 10% and 20% of investment expenditures, depending on the amount of investment. Rhode Island enacted a transferable tax credit in 2006, for productions with expenses of $300,000 or more. The credit equals 25% of eligible expenditures in the state. In 2007, Massachusetts expanded the refundable film tax credit by increasing the payroll credit from 20% to

25% of qualifying expenditures, lowering the minimum expenditure threshold from $250,000 to $50,000, and eliminating the per project cap on tax credit claims. In April of 2008, New York increased the state's refundable film tax credit from 10% to 30% of eligible production costs, and an additional 5% for projects in New York City.

In 2007, Iowa enacted: (a) a transferable tax credit of 25% of qualified spending for producers; (b) a transferable tax credit of 25% of qualified spending for investors; and (c) 100% sales tax exclusion for Iowa vendors. On April 7, 2008, the Michigan film tax credit was signed into law. The credit is refundable, and equal to 40% of a company's qualified expenditures for producing a motion picture or other media entertainment project in Michigan. An additional 2% credit is provided for filming in a core community. The state also has a 25% tax credit for investment in new studios, and a 50% tax credit for on-the-job training expenses. In December, 2008, Illinois increased its transferable film tax credit from 20% to 30% of Illinois production expenditures and 30% of Illinois salaries. An additional credit of 15% is provided for salaries of residents of economically disadvantaged areas. The original Illinois film tax credit was enacted in 2003.

9. Table 1 provides summary information about film tax credits in surrounding states and other selected states. The table shows that Iowa, Illinois, and Michigan provide tax credits of 30% or more of eligible film expenditures.

TABLE 1

Film Tax Credits

Rate	Requirements	Features	Caps/Exclusions
California 20% of qualifying production expenses for studio projects. 25% of qualifying expenses for independent film productions and TV series.	Studio projects under $75 million. $1 million to $10 million for independent film productions. Productions must locate in state for 75% of shooting days, and 75% of budget must be in California.	Nonrefundable.	$100 million annual cap on total credit amounts.
Colorado 10%	$100,000 of qualified expenses, if production originates in Colorado. $1,000,000 of qualified expenses if production does not originate in Colorado. 75% of total expenditures must be qualified local expenditures.	Rebate	$10 million annually provided for rebates.

Rate	Requirements	Features	Caps/Exclusions
Connecticut 30%. 10% to 20% investment credit depending upon size of project	$50,000 in qualified production expenditures. $50,000 of digital animation expenses. Must have studio and employ 200 employees in state, capital project must be $15,000 for investment credit.	Transferable, three-year carryforward.	Compensation over $15 million for any individual is excluded. $15 million annual cap on total amount of digital animation credits.
Georgia 20% additional 10% for including Georgia promotion in titles or credits.	$500,000 qualified production expenditures.	Transferable.	$500,000 per person salary cap when paid by W-2.
Illinois 30% of Illinois production expenditures. 30% of Illinois salaries. Additional 15% on salaries of individuals living in an economically disadvantaged area.	$50,000 for projects under 30 minutes. $100,000 for projects over 30 minutes.	Transferable, five-year carryforward.	Salary for Illinois resident over $100,000 is excluded.
Iowa 25% for investors. 25% for products. 100% exclusion for Iowa vendors.	$100,000 qualified spending in Iowa. Director, producer, principal cast do not qualify.	Transferable.	No per project or program caps.
Louisiana 25% plus an additional 10% of payroll for Louisiana residents.	$300,000 in base investment (defined as production expenditures or investment in film infrastructure).	Transferable, ten-year carryforward.	Salary for any Louisiana resident earning over $1 million is excluded from 10% payroll credit.
Massachusetts 25% (payroll); 25% (production expenses)	$50,000 in Massachusetts production expenses in a 12-month period for payroll credit; 50% of expenses, or 50% of principal photography days must take place in Massachusetts for production expense credit.	Transferable, refundable at 90%, five-year carryforward.	Salaries for individuals earning more than $1 million are ineligible for payroll credit, but are eligible for the production expense credit.

Rate	Requirements	Features	Caps/Exclusions
Michigan 40% plus an additional 2% if filming in one of 103 "core communities."	$50,000 in Michigan expenditures.	Refundable at 100%.	Credit only applies to up to $2 million paid to any individual employee; earnings of nonresident below-the-line personnel are only eligible for a 30% credit.
Minnesota 15% rebate for productions less than $5 million. 20% rebate for productions of $5 million or more.	Only resident expenditures for cast, crew and Minnesota vendors qualify.	Refundable.	$2.5 million limit on the total amount of credits. Only funded from 2007 to 2009. Credits allocated in order of application.
New Jersey 20%	60% of total project expenses (exclusive of post-production costs) must be for services performed and/or goods used or consumed in New Jersey.	Transferable, seven-year carryforward.	Cannot exceed 50% of a taxpayer's tax liability when combined with other credits; total value of all credits cannot exceed $10 million in any fiscal year.
New Mexico 25%	No minimum level of expenditures for filming days.	Refundable at 100%.	$5 million credit cap per production on services provided by performing artists.
New York 30% plus an additional 5% for NYC.	For films shot in a facility: 75% of facility expenses must be incurred at a qualified New York facility. For location work, post production and other nonfacility work: 75% of location days must be shot in New York or production must spend $3 million in a qualified facility.	Refundable at 100%.	Generally excludes above-the-line costs (such as nontechnical crew, producers, actors). State cap ranges from $65 million in CY 2008 to $110 million in CY 2013. NYC allocated $30 million per year through 2011 for the additional 5% credit.
North Carolina 15%	$250,000 in qualifying expenses.	Refundable.	Credit limited to $7.5 million for a production.
Oregon Production: 20% goods and services; 10% Oregon-based payroll. Labor: 6.2% of payroll subject to Oregon withholding.	$750,000 expenses for production. $1,000,000 expenses for labor	Rebate.	Production rebates limited to $5 million. Labor rebates is pass back of withholding.
Missouri Up to 35% (30% for out-of-state cast and crew subject to Missouri withholding).	$50,000 expenditures for films less than 30 minutes. $100,000 expenditures for firms more than 30 minutes.	Transferable.	$4.5 million cap on total annual credits. Credits allocated to each production.

Rate	Requirements	Features	Caps/Exclusions
Rhode Island 25%	$300,000 in Rhode Island production expenses and 51% of principal photography days must take place in Rhode Island.	Transferable, three-year carryforward.	Total of all credits may not exceed $15 million per year.
Wisconsin 25% of production expenses. 25% of salary or wages paid to Wisconsin residents. 100% of sales and use tax on purchases of property and services used in production. 15% of purchases of depreciable tangible personal property and real property, construction rehabilitation or repair expenses.	$50,000 for productions under 30 minutes. $100,000 for productions of 30 minutes or more.	Refundable for production credits.	25% maximum credit for salaries and wages of Wisconsin residents.

10. A relatively large number of states have conducted dynamic analyses of the economic impact of state film industry tax incentives. Dynamic analysis attempts to calculate the full impact on the economy and state revenues of an increase or decrease in economic activity resulting from a tax law change, including "multiplier" and displacement effects. Generally, dynamic estimates of tax law changes are not made because there are a large number of uncertainties related to the correct application of econometric models to individual cases. Following is a summary of specific state reports.

Louisiana. The study was conducted by the Louisiana Legislative Fiscal Office in 2005, based on data for 2002 through 2004. At the time, Louisiana provided a tax credit equal to 10% of production company expenditures in the state, with a minimum expenditure amount of $300,000. The study estimated the economic and fiscal effects for 2002 through 2011. The model included estimates under a balanced budget requirement, and without one. Under the balanced budget computation, additional job counts were generally over 3,000 while personal earnings in the state were close to $200 million higher. (The balanced budget computation generally assumes the tax benefits are offset by budget reductions.) The additional tax revenue generated by the increased economic activity was between 16% to 18% of total tax credit amounts. As a result the film credit was estimated to increase state employment and income but would not generate nearly enough additional tax revenues to offset the amount of tax credit claims. With no balanced budget requirement, the employment and income effects are greater (slightly over $200 million and about 4,000, respectively), while the effect on additional sate revenues is slight (revenues of about 18% to

20% of tax credit amounts).

Massachusetts. The study was conducted by the Massachusetts Department of Revenue in September, 2008. In 2007 Massachusetts increased the film tax credit to equal 25% of the taxpayer's qualifying expenditures, with a threshold expenditure amount of $50,000. Since the credit had recently been increased, the analysis was hypothetical and assumed $100 million annual tax expenditure ($400 million in production expenses). The analysis projected the estimated incremental effect of the tax credit. As is the case for many of these studies, estimates were projected for both a balanced budget, and a no balanced budget requirement. Under the balanced budget model, total output would increase by $633 million, state gross domestic product would increase by $349 million, total labor and proprietor income would increase by $288 million, and total employment would increase by 2,388 to 3,658. The additional tax revenues generated from the $100 million tax credit would be an estimated $17.9 million. With no balanced budget requirement, Massachusetts total output would increase by $720 million, state GDP by $451 million, total labor and proprietor income by $368 million, and employment by between 4,044 and 5,314. Additional tax revenues would be $23 million. The report notes that the employment estimates are full-time equivalents, while film industry productions are temporary and sporadic, so that the jobs actually generated would not be full-time but a series of one-time projects. The report also notes that the multiplier effects of film industry spending are reduced by three factors: (a) a significant portion of new direct film industry spending is paid to nonresidents and out-of-state businesses; (b) under a balanced budget requirement the lost tax revenues have to be offset by a reduction in government spending which creates a negative multiplier effect; and (c) some of the activity would have occurred even without the incentives. Finally, the estimate did not account for any economic impact resulting from increased exposure of the state, or the benefits of having high-profile actors in Massachusetts.

Connecticut. The Connecticut Department of Economic and Community Development (DECD) performed an econometric analysis of the Connecticut film production tax credit in 2008. The credit is transferable and equals 30% of qualified production expenses incurred in Connecticut by an eligible production company for a qualified production. Total qualified production expenditures must exceed $50,000. The study covered the period from July 2006 through September 2007. The DECD study estimated that $16.5 million in film tax credits generated $20.7 million in new state GDP, $6.6 million in new disposable income, and 395 new full-time equivalent jobs in 2007. This implies that each net dollar in tax credit generated $1.57 in increased GDP, $0.50 million in increased personal income in 2007, and that the net cost per job was around $33,500. The study projected that without additional tax credits granted in subsequent years, these increases would dissipate. The DECD study estimated that, in 2007, each initial dollar of film tax credit granted was offset by about seven cents in new tax revenue, and by about 13 cents in reduced government spending, due to a balanced budget requirement. On net, each dollar of film tax credit cost the state approximately $0.80. In addition, the reduction in government spending, had a negative multiplier effect.

New York. This dynamic analysis was conducted by Ernst & Young in January, 2009. Since the New York film tax credit had been increased to 30% of eligible production costs, the study assumed that the 30% rate would allow the state to retain its current level of film and post production activity by competing with other states offering similar credits. The study estimated the impact of the 30% credit at a $940 million level of direct spending of credit-assisted productions, and the retention of post-production activity. The model estimated that the film tax credit increased the value of total state output by approximately $3.9 billion, increased state income by about $2.1 billion, and created or retained over 19,500 jobs. The return on investment of film tax credits to additional state revenues was 1.1, which increased to 1.9 when the 5% credit for productions in New York City were included.

New Mexico. Ernst & Young calculated the estimated economic impact of the New Mexico film tax credit based on a survey of film industry employees and businesses, investment loan data, and film production tax credit application data from 2007. The tax credit is refundable and equals 25% of eligible production expenditures. Unlike most other studies, this one included the estimated economic impact of additional tourism induced by familiarity with films produced in New Mexico. According to the study, the tax credit impacts the New Mexico economy through three channels: (a) increased film production activity; (b) increased investment in New Mexico film studios and equipment, and (c) spending by tourists who visit the state or extend their trip to see film-related attractions. Ernst & Young estimated that the total economic impact of the New Mexico film production tax credit program was an increase of $891.8 million in economic output, an increase of $487.5 million in state income, and an additional 9,210 jobs. Total estimated film credit claims were $47.1 million, while the additional state revenue attributed to economic activity stimulated by the credit was $44.1 million, for a state return on investment of 0.94. However, when additional local revenue impacts are included the return on investment increases to 1.50.

Michigan. In February, 2009, the Center for Economic Analysis at Michigan State University released a study of the estimated economic impacts of Michigan's motion picture production industry and the Michigan Motion Picture Production Tax Credit. The Michigan tax credit is refundable and equal to 40% of a production company's qualified expenditures incurred in producing a motion picture or other media entertainment project in the state. The model projected the statewide economic impacts resulting from $65.4 million in direct production expenditures in 2008, and the projected expenditures from 2009 to 2012. Projected expenditures were based on expenditure growth experienced in New Mexico and Louisiana. The study projected that direct production expenditures will increase to $187.7 million in 2012. These expenditures would likely produce 2,922 jobs, state personal income of $189.5 million, and increased output of $335.6 million. In addition, there was evidence that film expenditures would positively influence migration in Michigan. The study did not include an estimate of the net revenue effect on state government.

11. According to the state's tax expenditure report, the estimated cost of the Connecticut film tax credit in fiscal year 2009 will be $90 million, which is higher than estimates for any other corporate tax expenditure in the fiscal year, including tax credits for fixed capital investment ($60 million), research and experimentation ($10 million), and general job creation ($10 million). In Michigan, the Senate Fiscal Agency has estimated that the state film tax credits will cost $99 million in fiscal year 2009, and $198 million in fiscal year 2010. The dynamic analyses described above of the film tax credits only measure the impact of public investment film productions. None

of the dynamic analyses of different state film tax credits focused on the relative cost-effectiveness of the film tax credit compared to that of other economic development incentives. Private firms typically calculate the net present value (NPV) or internal rate of return of various projects, and invest in the ones with highest NPV or rate of return. In addition, as Table 1 shows, many states currently have film tax incentives that offer tax benefits that are equal to or greater than the benefits provided by the Wisconsin film production services and film production investment tax credits. Many states, including New York in 2008, Illinois in 2008, and California in 2009 have increased tax benefits to compete with those offered in other states. With this type of increased competition, it may be difficult for Wisconsin to establish a sustainable film industry with stable employment opportunities in the state.

12. Table 2 lists the productions which have been certified for Wisconsin film production services tax credits. The table shows that the film Public Enemies received $4.6 million of the total of $5.4 million in state credit claims.

TABLE 2

Productions Certified for Film Production Services Tax Credit 2008-09

Production	Claimant	Type of Production	Location	Approval Date	Nonrefundable Tax Credits	Refundable Tax Credits
Public Enemies	PE Productions, LLC	Film	Statewide	Feb 19, 2008	$611,525.99	$4,015,810.75
Pioneers of Television	Boettcher/Trinklein, Inc.	Television	Milwaukee	Apr 1, 2008	122,683.00	121,413.00*
Operation: Resilient Plant	Filament Games, LLC	Electronic Game	Madison	Jun 13, 2008	42,950.00	104,500.00*
Nonames	Nonames, LLC	Film	Wisconsin Rapids Area	Aug 22, 2008	24,000.00	114,000.00*
Fort McCoy	Fort McCoy, LLC	Film	La Crosse Area	Sep 2, 2008	8,032.87	64,745.83
Nephilim	Pulse Studios, LLC	Film	Green Bay-Milwaukee	Sep 2, 2008	68,000.00	726,000.00*
Our Courts	Filament Games, LLC	Electronic Game	Madison	Sep 15, 2008	13,100.00	36,250.00*
Road to Emmaus	Boettcher/Trinklein, Inc.	Film	SE Wisconsin	Sep 29, 2008	52,521.00	51,500.00*
Dust	Feba Films, LLC	Film	SE Wisconsin	Nov 24, 2008	27,725.00	21,750.00*
Project Solitude	Starlight - Pulse Studios Solitude, LLC	Film	Green Bay	Dec 5, 2008	9,854.50	110,967.50*
Feed the Fish	Feed the Fish, LLC	Film	Door County	Feb 23, 2009	13,107.90	42,542.75*
					$993,500.26	$5,409,479.83

*Estimate.

13. The Wisconsin Department of Commerce recently published a cost benefit analysis of the Wisconsin film production services tax credit. Four flaws are identified:

The program operates differently than assumed. The Department first uses a hypothetical example where total production expenditures are $3.0 million, of which $1.0 million would be Wisconsin vendor spending, $1.0 million would be Wisconsin resident salaries and wages, and $1.0 million would be salaries and wages paid to out-of-state employees. Tax liability would be up to $67,500 in individual income taxes for in-state labor (up to 6.75% of $1.0 million), up to $67,500 in individual income taxes for out of state labor (up to 6.75% of $1.0 million), and up to $50,000 in sales taxes (5% of up to $1.0 million), for maximum total of $185,000. The Department indicates that it would be assumed that the tax credit was a maximum of $46,250 (25% of $185,000).

However, under this example, the credit would actually equal 25% of resident salaries and wages up to $25,000 ($250,000), 25% of production expenses (includes purchases from vendors and non-Wisconsin salaries and wages -- $500,000), and the sales tax on vendor purchases ($50,000). The Department calculates that the credit would equal $800,000, of which $500,000 would be refundable. As a result, the credit would exceed additional revenues by $615,000 or more. Using the credit awarded to the movie "Public Enemies" as an example, Commerce indicates that total production expenditures were $18 million, of which $5 million were in Wisconsin. Additional taxes generated by the production were an estimated $270,000, while the total tax credit paid was $4.6 million.

The program is biased toward out-of-state labor. There is a $25,000 limit on the amount of wages and salaries paid to Wisconsin employees that can be used to claim the credit under the salaries and wages credit component, while there is no limit on the amount of salaries and wages that can be claimed for out-of-state employees under the refundable production expenses component of the credit. As a result, a salary of $2.0 million for an out-of-state director would generate a $500,000 refundable tax credit, while the same salary would generate a credit of $25,000 if the director was a Wisconsin director. (If the Wisconsin director was one of the two highest paid employees, a credit could not be claimed for the salary.)

The program subsidizes non-Wisconsin expenses. Again, using "Public Enemies" as an example, Commerce lists the components of the $18 million in production expenses as follows: (a) $10.7 million for out-of-state labor (b) $5.2 million for miscellaneous purchases, such as housing and hotels, meals, and travel; (c) $192,00 for Wisconsin purchases, such as construction materials and props, (d) $1.9 million for Wisconsin labor; and (e) $270,000 for state taxes. Of the total $18 million in expenditures $5 million was spent in Wisconsin, while $13.5 million was out-of-state.

The program is not cost-effective. The Department notes that the $5.0 million in Wisconsin spending from "Public Enemies" was almost entirely offset by the $4.6 million tax credit. Using a 3.0 multiplier on all income generated by the movie, the Department estimates that the "Public Enemies" returned $1.70 for every $1 state investment. In comparison Commerce estimates that $4.25 million in tax credits and investments provided for a Sargento Foods, Inc. project, generated state tax revenues of $8 million, state salaries and wages of $223 million, and capital investment in Wisconsin of $50 million. The Sargento project returned an estimated $161 for every $1 of state investment. Similarly, Commerce estimates that dollars of incentive per hour of employment created generally would be $61.33 for film tax credits, while the highest cost for Commerce tax credit and grant and loan programs would be $5.96 for development opportunity zones. The estimated weighted average cost per job created is about $6,200 for all Commerce financial assistance programs, while the film production services tax credit costs approximately $127,600 for each job created.

The program is out of line with other incentives. Of two projects with $18 million invested, 180 jobs retained, and 20 jobs created, the Department estimates that the maximum incentive that could be provided would be $1.6 million for an enterprise development zone project, compared to $4.5 million for a video game project. Commerce also estimates that a similar program for large corporations in the state could cost as much as $8.1 billion.

14. The disparity in the of treatment of credits claimed for salaries and wages of Wisconsin residents compared to those claimed for non-Wisconsin employees is the result of including wages of out-of-state employee as eligible expenses for claiming the refundable production expenses component of the tax credit. Under the law, there is a separate component of the credit that provides a tax credit for salaries and wages paid to a claimant's employees, but is limited to the first $25,000 wages paid to Wisconsin residents. It is not clear that other salaries and wages can be claimed as production expenses.

15. Public testimony in support of the current program included:

a. The film tax credit has attracted an industry to Wisconsin that would not otherwise operate here. Production expenses provide income to local vendors, and jobs to residents. Film Wisconsin estimated that "Public Enemies" generated $7.5 million in state income and created 759 jobs.

b. Film industry jobs are similar to those in the construction trades. Workers work at successive projects throughout the year, and wages are relatively high. Representatives of the International Alliance of Theatrical Stage Employees indicate that "Public Enemies" created more than 100 jobs for its members, with hourly wages ranging from $20.07 to $27.17 an hour. The average weekly gross pay was over $7,000 for the six-week project. Total payroll revenues for union members was about $2.0 million in 2007. Payrolls during the six-week production in 2008 represented over 37% of this amount.

c. New film programs have been started at five colleges and universities in Wisconsin. Typically, young people and graduates in the film industry have to leave the state to find work. The film industry will help keep young professional creative individuals in Wisconsin.

d. Millions of dollars have been invested in film industry infrastructure as a result of the tax credits. RDI is investing $6 million in a studio in Milwaukee, while Pulse Studios is investing $1.0 million in Green Bay.

e. The economic impact of the tax credit cannot be accurately estimated in one year. New productions contribute to the growth of film industry workforce and related infrastructure. Over time, an experienced workforce and developed infrastructure would attract productions to the state.

16. If the current film production tax credits are restored, the sum sufficient appropriation for refundable film tax credits would be reestimated to be $5,400,000 GPR annually. State income and franchise tax revenues would be reduced by an estimated $1,000,000 annually. These estimates are based on activity in 2008-09. However, the more generous credits recently enacted by other states may affect program costs.

17. As an alternative, the following changes to the film tax credit program have been

proposed (Alternative #2):

The film production services tax credit would be repealed and a new refundable tax credit would be created equal to:

a. 25% of salaries, wages and/or contract payments to all Wisconsin residents, including actors that work on a production in Wisconsin. The salaries and wages of individuals with compensation in excess of $1 million would be excluded from the credit;

b. 25% of salaries, wages, and/or contract payments to all nonresidents up to a maximum of $50,000. Exclude above-the-line expenses (nontechnical crew members standard to the industry, producers, writers, casting directors and actors) and salaries and wages of individuals with compensation in excess of $1.0 million;

c. 25% of nonlabor production expenses incurred in Wisconsin.

At least 35% of the project's total budget would have to be spent in Wisconsin. The amount of credits that could be allocated to a project would be limited to $15.0 million.

The film production company investment tax credit would be modified as follows:

a. An entity would be eligible for the credit if the purpose of the investment was for the making of accredited productions;

b. Existing companies could claim the credit;

c. The credit would be refundable.

The total amount of credits that could be allocated to a project would be $15.0 million.

"Production expenditures" would mean any expenditures that were incurred in Wisconsin and directly used to produce an accredited production, including expenditures for set construction and operation, wardrobes, make-up, clothing accessories, photography, sound recording, sound synchronization, sound mixing, lighting, editing, film processing, film transferring, special effects, visual effects, renting or leasing facilities or equipment, renting or leasing motor vehicles, food, lodging, and any other similar expenditures as determined by the Department.

"Accredited production" would mean a film, video, broadcast advertisement, or television production, as approved by the Department of Commerce, for which the aggregate salary and wages included in the cost of the production for the period ending 12 months after the month in which the principal filming or taping of the production begins exceeded $100,000 for a production that is 30 minutes or longer of $50,000 for a production that was less than 30 minutes. "Accredited production" would also mean an electronic game, as approved by the Department of Commerce, for which the aggregate salary and wages included in the cost of the production for the period ending 36 months after the month in which the principal programming, filming, or taping of the production begins exceeded $100,000. An "accredited production" would not include any of the following, regardless of production costs: (a) news, current events, or public programming or program that includes weather or market reports; (b) a talk show; (c) a production with respect to a questionnaire or contest; (d) a sports event or sports activity; (e) a gala presentation or awards show; (f) a finished production that solicits funds; (g) a production for which the company is required under 18USC 2257 to maintain records with respect to a performer portrayed in a single media or multimedia program; (h) a production produced primarily for industrial, corporate, or institutional purposes.

An application fee equal to 2% of budget requested or $5,000, whichever amount is less, would be required to be paid to the Department of Commerce.

The Department of Commerce would be required to submit an annual report to the Joint Finance Committee. The report would include the number of entities receiving tax credits, total expenditures associated with the credits made in state and the location expenditures were made, and the total number of individuals employed on the accredited projects. The Department would be required to use financial tracking forms and permits standard to the industry.

All changes would be effective for tax years beginning after December 31, 2008. Under these provisions, and based on activity in 2008-09, the sum sufficient appropriation for refundable film tax credits would be estimated to be $5,300,000 GPR annually.

18. On the other hand, if the Committee decides to eliminate production incentive programs, both the existing program and the grant program included under the bill could be removed (Alternative #4).

ALTERNATIVES

1. Approve the Governor's recommendation to sunset the film production services and film production company investment tax credits, and replace it with a film project grants program with $470,000 GPR annually.

2. Delete the Governor's recommendation, and instead replace it with the alternative program as identified under discussion point #17.

ALT 2	**Change to Bill** Funding
GPR	$9,660,000

3. Delete the Governor's recommendation. As a result, estimate the sum sufficient appropriation for the refundable film production services tax credits to be $5,400,000 GPR annually. Reduce annual state income and franchise tax revenues by an estimated $1,000,000 annually.

ALT 3	Change to Bill	
	Revenue	Funding
GPR	- $2,000,000	$9,860,000

4. Delete the Governor's recommendation to create a film project grant program. Further, repeal the current film production tax credit programs (as recommended by the Governor).

ALT 4	Change to Bill
	Funding
GPR	- $940,000

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