HB 24-1358

Legislative Council Staff
Nonpartisan Services for Colorado's Legislature

Revised Fiscal Note

(replaces fiscal note dated March 20, 2024)

Drafting Number:	LLS 24-1039	**Date:**	April 30, 2024
Prime Sponsors:	Rep. Herod; Snyder Sen. Mullica; Baisley	**Bill Status:** **Fiscal Analyst:**	Senate Finance Amanda Liddle | 303-866-5834 amanda.liddle@coleg.gov

Bill Topic: **FILM INCENTIVE TAX CREDIT**

Summary of Fiscal Impact:

☒ State Revenue ☐ State Transfer ☐ Local Government
☒ State Expenditure ☒ TABOR Refund ☐ Statutory Public Entity

The bill continues and makes modifications to the film incentive tax credit. The bill increases expenditures in FY 2024-25 and decreases General Fund revenue starting in FY 2024-25 through FY 2031-32.

Appropriation Summary: For FY 2024-25, the bill requires an appropriation of $29,120 to the Office of Economic Development and International Trade (OEDIT). It includes appropriations to OEDIT totaling $429,120.

Fiscal Note Status: The fiscal note reflects the reengrossed bill.

Table 1
State Fiscal Impacts Under HB 24-1358

		Budget Year FY 2024-25	Out Year FY 2025-26
Revenue	General Fund	($2.5 million)	($5.0 million)
	Total Revenue	**($2.5 million)**	**($5.0 million)**
Expenditures[1]	General Fund	$29,120	-
	Cash Funds	$400,000	-
	Total Expenditures	**$429,120**	**-**
Transfers		-	-
Other Budget Impacts	TABOR Refunds	($2.5 million)	($5.0 million)
	General Fund Reserve	$4,368	-

[1] The changes in law under this bill will increase General Fund expenditure of $29,120 only. The bill includes appropriations totaling $429,120.

Summary of Legislation

The bill makes modifications to the existing film incentive tax credit, including:

- allowing the Office of Economic Development and International Trade (OEDIT) to issue tax credit reservations through 2029 rather than in 2024 only;
- extending the deadline for OEDIT to issue all tax credit certificates to December 31, 2031, rather than December 31, 2024;
- increasing the credit amount from 20 percent to up to 22 percent of qualified expenditures;
- adding payments to personal service corporations as a qualified local expenditure for the purpose of qualifying for the tax credit, up to $1 million in expenditures per personal service corporation per calendar year;
- removing the condition that the credit is only available in years that the amount of state revenue is in excess of the Referendum C cap by at least $50 million; and
- extending the deadline from February 4, 2025, to July 1, 2028, for a tax credit effectiveness study to be submitted to the General Assembly.

In addition, the bill appropriates $400,000 to OEDIT from the Colorado Office of Film, Television, and Media Operational Account Cash Fund in FY 2024-25 for the Colorado Office of Film, Television, and Media.

Background

House Bill 23-1309 made unavailable the historical performance-based incentive rebate program for eligible film, television, and production-related expenses for calendar year 2024 and replaced it with a state income tax credit for a film production company that employs a workforce for in-state production activity made up of at least 50 percent Colorado residents. The credit is equal to:

- 20 percent of the total amount of the production company's qualified local expenditures if the total is at least $100,000, for a production company that originates production activities in Colorado;
- 20 percent of the total amount of the production company's qualified expenditures if the total is at least $250,000, for a production company that produces a television commercial or video game and does not originate production activities in Colorado but employs a workforce made up of at least 50 percent Colorado residents for any in-state production activity; and
- 22 percent of the total amount of a production company's qualified local expenditures that the Office of Economic Development and International Trade (OEDIT) determines that the production company filmed in a rural community or marginalized urban center, in addition to meeting the other criteria in statute.

Qualified local expenditures include payments made by a production company for direct costs deemed appropriate by OEDIT, including payments up to $1 million per employee or contractor that the production company makes to the wages and/or salaries of workers who participate in production activities. House Bill 23-1309 did not explicitly include payments to personal service corporations—businesses taxed at the federal C corporation rate who provide needed personal services to a company, typically in performing arts, accounting, engineering, architecture, consulting, law, actuarial science, and health—for the wages/salaries of their workers performing the personal services for the production company.

House Bill 23-1309 required the Colorado Office and Film, Television and Media (OFTM) within OEDIT to provide a report on the effectiveness of the credit to the House of Representatives Finance Committee and Senate Finance Committee by February 4, 2025.

Finally, the availability of the credit is conditional on the state TABOR situation. If the state revenue subject to TABOR exceeds the Referendum C cap by at least $50 million in FY 2023-24, OEDIT may issue income tax credits to qualified taxpayers up to $5 million. If revenue subject to TABOR does not exceed the Referendum C cap in FY 2023-24, or exceeds the cap by less than $50 million, the availability of the credit is determined by the General Assembly.

The fiscal note for House Bill 23-1309 estimated that the full $5 million in 2024 tax credits would be issued. The certification process that will determine if state revenue for FY 2023-24 meets the above requirements does not occur until September 2024; therefore, under current law, OEDIT cannot provide any production companies with credits until September 2024 at the earliest.

State Revenue

The bill is expected to reduce General Fund revenue by $2.5 million in FY 2024-25 (half-year impact), and by $5 million in FY 2025-26 and future fiscal years until a final half year impact in FY 2031-32. The bill reduces individual and corporate income tax revenue, which is subject to TABOR.

Because the fiscal note for House Bill 23-1309 estimated that the full $5 million in calendar year 2024 tax credits would be issued, this fiscal note assumes that the modifications made per House Bill 24-1358 will have no additional revenue impact in calendar year 2024. Given that HB 24-1358 removes the conditionality of the tax credit, expands what may be considered a qualified local expenditure, and increases the percent of expenditures that may be qualified for the tax credit, it is assumed that the full $5 million allowed in tax credits per year will continue to be issued for calendar year 2025 and beyond.

House Bill 23-1309 created the film incentive tax credit for 2024 and correspondingly paused the performance-based incentive rebate program in 2024 only. House Bill 24-1358 extends the film incentive tax credit through 2031, but does not make unavailable the performance-based incentive rebate program for 2025 or future years. To the extent that production companies choose to apply for the rebate over the tax credit, the revenue reductions from the tax credit may be smaller than estimated in this fiscal note.

State Expenditures

The bill requires one-time expenditures of $29,120 in FY 2024-25 only for OEDIT to build out the application in Salesforce. The existing credit was created in OEDIT's old system; OEDIT will need to build the application in their updated system due to the bill's extension of the tax credit beyond 2024.

In addition, the bill appropriates $400,000 to the Office of Film, Television, and Media within OEDIT. The appropriation is from the Colorado Office of Film, Television, and Media Operational Account Cash Fund.

Other Budget Impacts

TABOR Refunds. The bill is expected to decrease the amount of state revenue required to be refunded to taxpayers by the amounts shown in the State Revenue section above. This estimate assumes the March 2024 LCS revenue forecast. A forecast of state revenue subject to TABOR is not available beyond FY 2025-26. Because TABOR refunds are paid from the General Fund, decreased General Fund revenue will lower the TABOR refund obligation, but result in no net change to the amount of General Fund otherwise available to spend or save.

General Fund Reserve. Under current law, an amount equal to 15 percent of General Fund appropriations must be set aside in the General Fund statutory reserve in FY 2024-25. Based on this fiscal note, the bill is expected to increase the amount of General Fund held in the reserve by the amounts shown in Table 1, which decreases the amount of General Fund available for other purposes.

Effective Date

The bill takes effect 90 days following adjournment of the General Assembly sine die, assuming no referendum petition is filed.

State Appropriations

For FY 2024-25, the bill requires a General Fund appropriation of $29,120 to OEDIT.

Currently, the bill includes appropriations to OEDIT totaling $429,120. Of this amount:

- $29,120 is from the General Fund; and
- $400,000 is from the Colorado Office of Film, Television, and Media Operational Account Cash Fund.

State and Local Government Contacts

Information Technology	OEDIT	Personnel
Revenue	State Auditor	