

## Film Incentive Tax Credit Memo

During the 2023 legislative session, the General Assembly passed House Bill 23-1309 authorizing an income tax credit for film production companies for in-state production activities. The income tax credit replaced the State’s cash rebate program available to production companies for their in-state production activities and is only effective for Tax Year 2024. The credit’s purpose is to “incentivize production companies to film in Colorado and attract more film projects, in particular high-budget film projects, that will employ more Coloradans.” The tax credit will expire unless the General Assembly takes action during the 2024 legislative session to extend it. Statute requires us to issue an evaluation prior to the legislative session before a tax expenditure expires [Section 39-21-305(1)(d), C.R.S.]. However, because Tax Year 2024 is the first year the credit is available, there are no data to perform a complete evaluation of the credit prior to the 2024 legislative session. Therefore, we are issuing this memo to provide a summary of the credit.

The credit is available to production companies that employ a workforce made up of at least 50 percent Colorado residents and the credit amount is based on the production’s “qualified local expenditures.” These are defined as payments made by the production company to a person or business in Colorado as part of the production, and can include, but are not limited to, payments for set construction, wardrobe, and accessories; the cost of renting facilities and equipment, including leasing vehicles and providing food and lodging to people working on the production; and payments for wages and salaries for employees or contractors when Colorado income taxes are withheld.

Production companies can qualify for a credit of up to 20 percent of their qualified local expenditures if:

- The production company is Colorado-based and spends a minimum of \$100,000 on qualified local expenditures, or
- The production company is an out-of-state company that is producing a commercial or video game and spends a minimum of \$250,000 in qualified local expenditures.

If the production is filmed in a rural community or a marginalized urban center—or if the production used local infrastructure when filming—the production company can receive a 22 percent tax credit.

Additionally, the director of the Office of Economic Development and International Trade (OEDIT) may approve a tax credit that exceeds 20 or 22 percent for a production company.

The Colorado Office of Film, Television, and Media (OFTM) in OEDIT and the Economic Development Commission (EDC) are charged with reviewing and approving applications for the tax credit. Production companies must first apply to OFTM for conditional approval for the tax credit before beginning

production activities in Colorado. The OFTM and the EDC may grant conditional approval for tax credits for a project, based on the project's expected qualified local expenditures. The OFTM and EDC can approve up to \$5 million in credits across all projects, if the State revenue surplus for Fiscal Year 2024 is at least \$50 million. If the state revenue surplus does not exceed \$50 million, OFTM cannot issue any tax credits unless the General Assembly passes a bill that specifies an amount of tax credits available for that tax year. Once a production company has completed its production activities in Colorado, it must have a Colorado-based CPA certify that it met the workforce and qualified local expenditures requirements. Once the OFTM has approved the CPA's report, the OFTM issues a tax credit certificate to the production company. If a production company's project has credits that exceed its income tax liabilities for the year, the amount of excess credits will be refunded to the company. Statute also requires that OEDIT and the OFTM review the credit's effectiveness and report the results of their review no later than February 4, 2025.

## Policy Consideration

**The General Assembly may want to consider specifying a maximum amount of aggregate tax credits available for the 2024 Tax Year during the 2024 legislative session.** Section 39-22-559(5), C.R.S., makes the \$5 million in credits available only if the state revenue surplus is at least \$50 million. However, the certification process that will determine if state revenue for Fiscal Year 2024 meets this requirement does not occur until September 2024. Therefore, the OFTM cannot provide any production companies with credits until September 2024 at the earliest. Alternatively, the General Assembly could change statute to specify a maximum amount of aggregate tax credits allowed for 2024. Statute allows the General Assembly to authorize a maximum amount of tax credits for the year if the State's revenue surplus is less than \$50 million, so it could use a similar process to allow OFTM to approve and issue credits earlier in the year.

**The General Assembly may want to consider clarifying whether out-of-state production companies producing a film or television show are eligible for the credit, and if so, the minimum amount of qualified local expenditures they must meet to qualify for a tax credit.** While statute defines "production activities" as "the shooting of a film, support activities related to such shooting, and any preshooting or postshooting activities," [Section 39-22-559(2)(g), C.R.S.], statute allows the credit for "Twenty percent of the total amount of the production company's qualified local expenditures if the total of such expenditures equals or exceeds two hundred fifty thousand dollars for a production company that produces *a television commercial or video game* [emphasis added] and that does not originate production activities in Colorado..." [Section 39-22-559(3)(b), C.R.S.]. Therefore, statute appears to limit the credit for out-of-state companies to only those working on television commercials or video games. Because part of the purpose of the tax expenditure is to "attract more film projects, in particular high-budget film projects" the General Assembly may want to consider specifying whether out-of-state production companies that are producing a television show or film are eligible for the tax credit as well and, if so, the required minimum amount of local expenditures. The cash rebate program, which is similar to the credit, requires out-of-state film productions to have a minimum of \$1,000,000 in qualified local expenditures to receive a cash rebate [Section 24-48.5-116(1)(b)(I), C.R.S.].