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LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/03/2014	.	
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The Committee on Commerce and Tourism (Detert) recommended the following:

Senate Substitute for Amendment (912158)

Delete lines 873 - 1075

and insert:

The election is binding upon any distributee, successor, transferee, or purchaser. The department shall notify the Department of Revenue of any election made pursuant to this paragraph.

2. A qualified production company is eligible for tax credits against its sales and use tax liabilities and corporate



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11 income tax liabilities as provided in this section. However, tax
12 credits awarded under this section may not be claimed against
13 sales and use tax liabilities or corporate income tax
14 liabilities for any tax period beginning before July 1, 2011,
15 regardless of when the credits are applied for or awarded.

16 (d)~~(e)~~ *Tax credit carryforward.*—If the certified production
17 company cannot use the entire tax credit in the taxable year or
18 reporting period in which the credit is awarded, any excess
19 amount may be carried forward to a succeeding taxable year or
20 reporting period. A tax credit applied against taxes imposed
21 under chapter 212 or ~~may be carried forward for a maximum of 5~~
22 ~~years after the date the credit is awarded. A tax credit applied~~
23 ~~against taxes imposed under~~ chapter 220 may be carried forward
24 for a maximum of 5 years after the date the credit is awarded,
25 after which the credit expires and may not be used.

26 (e)~~(f)~~ *Consolidated returns.*—A certified production company
27 that files a Florida consolidated return as a member of an
28 affiliated group under s. 220.131(1) may be allowed the credit
29 on a consolidated return basis up to the amount of the tax
30 imposed upon the consolidated group under chapter 220.

31 (f)~~(g)~~ *Partnership and noncorporate distributions.*—A
32 qualified production company that is not a corporation as
33 defined in s. 220.03 may elect to distribute tax credits awarded
34 under this section to its partners or members in proportion to
35 their respective distributive income or loss in the taxable year
36 in which the tax credits were awarded.

37 (g)~~(h)~~ *Mergers or acquisitions.*—Tax credits available under
38 this section to a certified production company may succeed to a
39 surviving or acquiring entity subject to the same conditions and



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40 limitations as described in this section; however, they may not
41 be transferred again by the surviving or acquiring entity.

42 (5) TRANSFER OF TAX CREDITS.—

43 (a) *Authorization.*—Upon application to ~~the Office of Film~~
44 ~~and Entertainment~~ and approval by the department, a certified
45 production company, or a partner or member that has received a
46 distribution under paragraph (4) (f) ~~(4) (g)~~, may elect to
47 transfer, in whole or in part, any unused credit amount granted
48 under this section. An election to transfer any unused tax
49 credit amount under chapter 212 or chapter 220 must be made no
50 later than 5 years after the date the credit is awarded, after
51 which period the credit expires and may not be used. The
52 department shall notify the Department of Revenue of the
53 election and transfer.

54 (b) *Number of transfers permitted.*—A certified production
55 company that elects to apply a credit amount against taxes
56 remitted under chapter 212 is permitted a one-time transfer of
57 unused credits to one transferee. A certified production company
58 that elects to apply a credit amount against taxes due under
59 chapter 220 is permitted a one-time transfer of unused credits
60 to no more than four transferees, and such transfers must occur
61 in the same taxable year.

62 (c) *Transferee rights and limitations.*—The transferee is
63 subject to the same rights and limitations as the certified
64 production company awarded the tax credit, except that the
65 initial transferee shall be permitted a one-time transfer of
66 unused credits to no more than two subsequent transferees, and
67 such transfers must occur in the same taxable year as the
68 credits were received by the initial transferee, after which the



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69 subsequent transferees may not sell or otherwise transfer the
70 tax credit.

71 (6) RELINQUISHMENT OF TAX CREDITS.—

72 (a) Beginning July 1, 2011, a certified production company,
73 or any person who has acquired a tax credit from a certified
74 production company pursuant to subsections (4) and (5), may
75 elect to relinquish the tax credit to the Department of Revenue
76 in exchange for 90 percent of the amount of the relinquished tax
77 credit.

78 (b) The Department of Revenue may approve payments to
79 persons relinquishing tax credits pursuant to this subsection.

80 (c) Subject to legislative appropriation, the Department of
81 Revenue shall request the Chief Financial Officer to issue
82 warrants to persons relinquishing tax credits. Payments under
83 this subsection shall be made from the funds from which the
84 proceeds from the taxes against which the tax credits could have
85 been applied pursuant to the irrevocable election made by the
86 certified production company under subsection (4) are deposited.

87 (7) ANNUAL ALLOCATION OF TAX CREDITS.—

88 (a) The aggregate amount of the tax credits that may be
89 certified pursuant to paragraph (3) (d) may not exceed:

- 90 1. For fiscal year 2010-2011, \$53.5 million.
- 91 2. For fiscal year 2011-2012, \$74.5 million.
- 92 3. For fiscal years 2012-2013, 2013-2014, 2014-2015, and
93 2015-2016, \$42 million per fiscal year.
- 94 4. Beginning July 1, 2014, for fiscal years 2014-2015 and
95 2015-2016, an additional \$50 million per fiscal year.
- 96 5. Beginning July 1, 2016, for fiscal years 2016-2017,
97 2017-2018, 2018-2019, and 2019-2020, \$50 million per fiscal



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98 year.

99 (b) Any portion of the maximum amount of tax credits
100 established per fiscal year in paragraph (a) that is not
101 certified as of the end of a fiscal year shall be carried
102 forward and made available for certification during the
103 following 2 fiscal years in addition to the amounts available
104 for certification under paragraph (a) for those fiscal years.

105 (c) Upon approval of the final tax credit award amount
106 pursuant to subparagraph (3)(g)2. ~~(3)(f)2.~~, an amount equal to
107 the difference between the maximum tax credit award amount
108 previously certified under paragraph (3)(d) and the approved
109 final tax credit award amount shall immediately be available for
110 recertification during the current and following fiscal years in
111 addition to the amounts available for certification under
112 paragraph (a) for those fiscal years.

113 (d) Amounts available on and after July 1, 2014, for
114 certification may not be certified before the fiscal year in
115 which the amounts are listed in paragraph (a), except as
116 provided in subparagraph (3)(d)2. ~~If, during a fiscal year, the~~
117 ~~total amount of credits applied for, pursuant to paragraph~~
118 ~~(3)(a), exceeds the amount of credits available for~~
119 ~~certification in that fiscal year, such excess shall be treated~~
120 ~~as having been applied for on the first day of the next fiscal~~
121 ~~year in which credits remain available for certification.~~

122 (8) RULES, POLICIES, AND PROCEDURES.-

123 (a) The department may adopt rules pursuant to ss.
124 120.536(1) and 120.54 and develop policies and procedures to
125 implement and administer this section, including, but not
126 limited to, rules specifying requirements for the application



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127 and approval process, records required for substantiation for
128 tax credits, procedures for making the election in paragraph
129 (4) (c) ~~(4) (d)~~, the manner and form of documentation required to
130 claim tax credits awarded or transferred under this section, and
131 marketing requirements for tax credit recipients.

132 (b) The Department of Revenue may adopt rules pursuant to
133 ss. 120.536(1) and 120.54 to administer this section, including
134 rules governing the examination and audit procedures required to
135 administer this section and the manner and form of documentation
136 required to claim tax credits awarded, transferred, or
137 relinquished under this section.

138 (9) AUDIT AUTHORITY; REVOCATION AND FORFEITURE OF TAX
139 CREDITS; FRAUDULENT CLAIMS.—

140 (a) *Audit authority.*—The Department of Revenue may conduct
141 examinations and audits as provided in s. 213.34 to verify that
142 tax credits under this section are received, transferred, and
143 applied according to the requirements of this section. If the
144 Department of Revenue determines that tax credits are not
145 received, transferred, or applied as required by this section,
146 it may, in addition to the remedies provided in this subsection,
147 pursue recovery of such funds pursuant to the laws and rules
148 governing the assessment of taxes.

149 (b) *Revocation of tax credits.*—The department may revoke or
150 modify any written decision qualifying, certifying, or otherwise
151 granting eligibility for tax credits under this section if it is
152 discovered that the tax credit applicant submitted any false
153 statement, representation, or certification in any application,
154 record, report, plan, or other document filed in an attempt to
155 receive tax credits under this section. The department shall



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156 immediately notify the Department of Revenue of any revoked or
157 modified orders affecting previously granted tax credits.
158 Additionally, the applicant must notify the Department of
159 Revenue of any change in its tax credit claimed.

160 (c) *Forfeiture of tax credits.*—A determination by the
161 Department of Revenue, as a result of an audit pursuant to
162 paragraph (a) or from information received from the department
163 or the Division Office of Film and Entertainment of Enterprise
164 Florida, Inc., that an applicant received tax credits pursuant
165 to this section to which the applicant was not entitled is
166 grounds for forfeiture of previously claimed and received tax
167 credits. The applicant is responsible for returning forfeited
168 tax credits to the Department of Revenue, and such funds shall
169 be paid into the General Revenue Fund of the state. Tax credits
170 purchased in good faith are not subject to forfeiture unless the
171 transferee submitted fraudulent information in the purchase or
172 failed to meet the requirements in subsection (5).

173 (d) *Fraudulent claims.*—Any applicant that submits
174 fraudulent information under this section is liable for
175 reimbursement of the reasonable costs and fees associated with
176 the review, processing, investigation, and prosecution of the
177 fraudulent claim. An applicant that obtains a credit payment
178 under this section through a claim that is fraudulent is liable
179 for reimbursement of the credit amount plus a penalty in an
180 amount double the credit amount. The penalty is in addition to
181 any criminal penalty to which the applicant is liable for the
182 same acts. The applicant is also liable for costs and fees
183 incurred by the state in investigating and prosecuting the
184 fraudulent claim.



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185 (10) ANNUAL REPORT.—Each November 1, the department Office
186 ~~of Film and Entertainment~~ shall submit an annual report for the
187 previous fiscal year to the Governor, the President of the
188 Senate, and the Speaker of the House of Representatives which
189 outlines the incentive program's return on investment and
190 economic benefits to the state. The report must also include an
191 estimate of the full-time equivalent positions created by each
192 production that received tax credits under this section and
193 information relating to the distribution of productions
194 receiving credits by geographic region and type of production.
195 The report must also include the expenditures report required
196 under s. 288.9241 ~~s. 288.1253(3)~~ and the information describing
197 the relationship between tax exemptions and incentives to
198 industry growth required under s. 288.1258(5). The department
199 may work with the Division of Film and Entertainment of
200 Enterprise Florida, Inc., to develop the annual report.

201 (11) REPEAL.—This section is repealed July 1, 2020 ~~July 1,~~
202 ~~2016~~, except that:

203 (a) Tax credits certified under paragraph (3) (d) before
204 July 1, 2020 ~~July 1, 2016~~, may be awarded under paragraph (3) (g)
205 ~~(3) (f)~~ on or after July 1, 2020 ~~July 1, 2016~~, if the other
206 requirements of this section are met.

207 (b) Tax credits carried forward under paragraph (4) (d)
208 ~~(4) (e)~~ remain valid for the period specified.

209 (c) Subsections (5), (8), and (9) shall remain