

FIRST REGULAR SESSION

HOUSE BILL NO. 169

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE SEITZ.

0220H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To amend chapter 135, RSMo, by adding thereto two new sections relating to tax credits for qualified film projects.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 135, RSMo, is amended by adding thereto two new sections, to be known as sections 135.751 and 135.752, to read as follows:

135.751. 1. This act shall be known and may be cited as the "Missouri Entertainment Industry Investment Act".

2. As used in this section, the following terms mean:

(1) "Affiliates", those entities that are:

(a) Included in the production company's or qualified interactive entertainment production company's affiliated group as defined in Section 1504(a) of the Internal Revenue Code, as amended; and

(b) Included on the same consolidated federal and Missouri income tax returns for all pertinent tax years;

(2) "Base investment", the aggregate funds actually invested and expended by a production company or qualified interactive entertainment production company as production expenditures incurred in this state that are directly used in a state-certified production or productions;

(3) "Film commission", the office of the Missouri film commission;

(4) "Game platform", the electronic delivery system used to launch or play an interactive game;

EXPLANATION — Matter enclosed in bold-faced brackets ~~thus~~ in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 (5) "Game sequel", an interactive game that builds upon the theme of a
18 previously released interactive game, is distinguished by a new title, and features
19 objectives or characters that are recognizably different from the original game;

20 (6) "Loan-out company", a personal service company contracted with and
21 retained by a production company to provide individual personnel who are not
22 employees of the production company, including actors, directors, producers, writers,
23 production designers, production managers, costume designers, directors of
24 photography, editors, casting directors, first assistant directors, second unit directors,
25 stunt coordinators, and similar personnel, for performance of services used directly in a
26 qualified production activity. The term does not include persons retained by a
27 production company to provide tangible property or outside independent contractor
28 services, such as catering, construction, trailers, equipment, and transportation;

29 (7) "Missouri promotional logo", a logo used for the promotion of tourism
30 designed by the Missouri division of tourism;

31 (8) "Multimarket commercial distribution", paid commercial distribution with
32 media buys that extend to markets outside of the state;

33 (9) "Prereleased interactive game", a new game, the offering of an existing game
34 on a new game platform, or a game sequel that is in the developmental stages of
35 production, which may be available to individuals for testing purposes but is not
36 generally made available or distributed to consumers or to the general public;

37 (10) "Production company", a company and its affiliates, other than a qualified
38 interactive entertainment production company, primarily engaged in qualified
39 production activities that have been approved by the film commission and the
40 department of economic development. The term "production company" shall not be
41 construed to include any form of business owned, affiliated, or controlled, in whole or in
42 part, by any company or person that is in default on any tax obligation of the state, or a
43 loan made by the state or a loan guaranteed by the state;

44 (11) "Production expenditures":

45 (a) Includes preproduction, production, and postproduction expenditures
46 incurred in this state that are directly used in a qualified production activity
47 including, but not limited to, the following: set construction and operation;
48 wardrobes, make-up, accessories, and related services; costs associated with
49 photography and sound synchronization; expenditures excluding license fees incurred
50 with Missouri companies for sound recordings and musical compositions; sound
51 recording projects used in feature films, series, pilots, or movies; lighting and related
52 services and materials; editing and related services; rental of facilities and equipment;
53 leasing of vehicles; costs of food and lodging; digital or tape editing; film processing;

54 transfers of film to tape or digital format; sound mixing; computer graphics services;
55 special effects services; animation services; total aggregate payroll; airfare, if purchased
56 through a Missouri travel agency or travel company; insurance costs and bonding, if
57 purchased through a Missouri insurance agency; and other direct costs of producing the
58 project in accordance with generally accepted entertainment industry practices;

59 (b) Includes payments to a loan-out company by a production company or
60 qualified interactive entertainment production company that has met its withholding
61 tax obligations as set out below. The production company or qualified interactive
62 entertainment production company shall withhold the applicable Missouri income tax
63 on all payments to loan-out companies for services performed in this state. Any
64 amounts so withheld shall be deemed to have been withheld by the loan-out company on
65 wages paid to its employees for services performed in this state under chapter 143. The
66 amounts so withheld shall be allocated to the loan-out company's employees based on
67 the payments made to the loan-out company's employees for services performed in this
68 state. For purposes of this section and chapter 143, loan-out company nonresident
69 employees performing services in this state shall be considered taxable nonresidents and
70 the loan-out company shall be subject to income taxation in the tax year in which the
71 loan-out company's nonresident employees perform services in this state,
72 notwithstanding any other provisions of law to the contrary. Such withholding
73 liability shall be subject to penalties, additions to tax, and interest in the same manner as
74 employee withholding taxes and the department shall provide by regulation the manner
75 in which such liability shall be assessed and collected; and

76 (c) Shall not be construed to include:

77 a. Postproduction expenditures for footage shot outside the state, marketing,
78 story rights, or distribution;

79 b. Any expenditure for work or services not conducted or rendered in the state,
80 provided that:

81 (i) Expenditures for services not performed at the filming site shall qualify only
82 if the vendor is a Missouri vendor; and

83 (ii) Expenditures for services conducted or rendered both in Missouri and
84 outside Missouri shall qualify only to the extent the service is conducted or rendered in
85 Missouri. The department of revenue shall establish by rule the information, forms, and
86 other documentation the department deems necessary to determine the extent that the
87 service is conducted or rendered in Missouri;

88 c. Expenditures for goods that were not purchased or rented or leased in this
89 state from a Missouri vendor. Expenditures for goods that are not purchased, rented, or
90 leased in Missouri from a Missouri vendor, but are used in Missouri, shall qualify as

91 **production expenditures only to the extent such goods are used in this state. A vendor**
92 **that acts as a conduit to enable purchases or rentals to qualify that would not otherwise**
93 **qualify shall not be considered a Missouri vendor with respect to such purchases,**
94 **rentals, or leases; or**

95 **d. Any transaction subject to taxation or fees and for which taxes or fees have**
96 **not been demonstrably paid;**

97 **(12) "Qualified interactive entertainment production company", a company and**
98 **its affiliates that:**

99 **(a) Maintain a physical business location in Missouri;**

100 **(b) On or after January 1, 2024, had a total aggregate payroll of two hundred**
101 **fifty thousand dollars or more for employees working within the state in the tax year the**
102 **qualified interactive entertainment production company claims the tax credits;**

103 **(c) Have gross income less than one hundred million dollars for the tax year; and**

104 **(d) Are primarily engaged in qualified production activities related to interactive**
105 **entertainment that have been approved by the film commission and the department of**
106 **economic development.**

107

108 **The term "qualified interactive entertainment production company" shall not be**
109 **construed to include any form of business owned, affiliated, or controlled, in whole or in**
110 **part, by any company or person that is in default on any tax obligation of the state, or a**
111 **loan made by the state or a loan guaranteed by the state;**

112 **(13) "Qualified Missouri promotion", a qualified promotion of this state**
113 **approved by the film commission and the department of economic development**
114 **consisting of a:**

115 **(a) Qualified movie production that includes a five-second long static or**
116 **animated logo that promotes Missouri in the end credits before the below-the-line crew**
117 **crawl for the life of the project and that includes a link to the Missouri division of**
118 **tourism's website on the project's web page;**

119 **(b) Qualified television production that includes an embedded five-second long**
120 **Missouri promotion during each broadcast worldwide for the life of the project and that**
121 **includes a link to the Missouri division of tourism's website on the project's web page;**

122 **(c) Qualified music video that includes the Missouri promotional logo at the end**
123 **of each video and within online promotions; or**

124 **(d) Qualified interactive game that includes a fifteen-second-long Missouri**
125 **advertisement in units sold and embedded in online promotions;**

126 **(14) "Qualified production activities":**

127 **(a) Only the following productions of new film, video, or digital projects**
128 **produced in this state and approved by the film commission and the department of**
129 **economic development as state-certified productions: feature films, series, pilots,**
130 **movies for television, televised commercial advertisements, music videos, interactive**
131 **entertainment, or prereleased interactive games. Such activities shall include projects**
132 **recorded in this state, in whole or in part, in either short or long form, animation and**
133 **music; fixed on a delivery system, which includes, but is not limited to, film, videotape,**
134 **computer disc, laser disc, and any element of the digital domain, from which the**
135 **program is viewed or reproduced; and which are intended for multimarket commercial**
136 **distribution via theaters, video on demand, direct to DVD, digital platforms designed for**
137 **the distribution of interactive games, or licensing for exhibition by individual television**
138 **stations, groups of stations, networks, advertiser-supported sites, cable television**
139 **stations, or public broadcasting stations; and**

140 **(b) The term "qualified production activities" shall not be construed to include**
141 **the coverage of news or athletic events, local interest programming, instructional videos,**
142 **corporate videos, any project that is not intended for multimarket commercial**
143 **distribution, or any project not shot, recorded, or originally created in Missouri;**

144 **(15) "Resident", the same meaning as in section 143.101;**

145 **(16) "State-certified production", a production engaged in qualified production**
146 **activities that have been approved by the film commission and the department of**
147 **economic development in accordance with regulations promulgated under this section.**
148 **In the instance of a "work for hire" in which one production company or qualified**
149 **interactive entertainment production company hires another production company or**
150 **qualified interactive entertainment production company to produce a project or**
151 **contribute elements of a project for pay, the hired company shall be considered a service**
152 **provider for the hiring company, and the hiring company shall be entitled to the film tax**
153 **credit;**

154 **(17) "State tax liability", any liability for the tax imposed under chapter 143,**
155 **excluding withholding tax under sections 143.191 to 143.265;**

156 **(18) "Total aggregate payroll", the total sum expended by a production company**
157 **or qualified interactive entertainment production company on salaries paid to**
158 **employees working within this state in a state-certified production or productions.**
159 **For purposes of this section:**

160 **(a) With respect to a single employee, the portion of any salary that exceeds five**
161 **hundred thousand dollars for a single production shall not be included when calculating**
162 **total aggregate payroll; and**

163 **(b) All payments to a single employee and any legal entity in which the employee**
164 **has any direct or indirect ownership interest shall be considered as having been paid to**
165 **the employee and shall be aggregated regardless of the means of payment or**
166 **distribution.**

167 **3. (1) For any production company or qualified interactive entertainment**
168 **production company that invests in a state-certified production approved by the film**
169 **commission and the department of economic development and whose average annual**
170 **total production expenditures in this state did not exceed thirty million dollars for the**
171 **three preceding tax years, there shall be allowed an income tax credit against its state**
172 **tax liability, subject to the additional limitations set forth in this section. The tax credit**
173 **under this subsection shall be allowed if the base investment in this state equals or**
174 **exceeds two hundred fifty thousand dollars for qualified production activities on or after**
175 **January 1, 2024, and shall be calculated as follows:**

176 **(a) The production company or qualified interactive entertainment production**
177 **company shall be allowed a tax credit equal to twenty percent of the base investment in**
178 **this state; and**

179 **(b) a. The production company or qualified interactive entertainment**
180 **production company shall be allowed an additional tax credit equal to ten percent of**
181 **such base investment if the qualified production activity includes a qualified Missouri**
182 **promotion. Such additional tax credit shall be allowed for any qualified production that**
183 **includes a qualified Missouri promotion upon its release to the general public. In lieu of**
184 **the inclusion of the Missouri promotional logo, the production company or qualified**
185 **interactive entertainment production company may offer alternative marketing**
186 **opportunities to be evaluated by the film commission and the department of**
187 **economic development to ensure that the alternative marketing opportunities offer**
188 **equal or greater promotional value to the state. The department of economic**
189 **development shall electronically certify to the department of revenue when the**
190 **requirements of this paragraph and subdivision (2) of subsection 4 of this section have**
191 **been met;**

192 **b. The additional percentage of tax credit allowed by this subdivision and by**
193 **subdivision (1) of subsection 4 of this section shall not be allowed to a production**
194 **company for any qualified production activity or state-certified production that has not**
195 **been commercially distributed in multiple markets; and**

196 **c. The additional percentage of tax credit that is allowed by this subdivision and**
197 **by subdivision (1) of subsection 4 of this section shall not be issued final certification**
198 **under subsection 10 of this section unless the state-certified production has been**
199 **commercially distributed in multiple markets within five years of the date that the**

200 project was first certified by the film commission and the department of economic
201 development.

202 (2) The base investment and the amount of the credit allowed by this subsection
203 and by subsection 4 of this section with respect to a production company shall be subject
204 to the limitations of and any reductions required by subsection 10 of this section.

205 (3) The film commission and the department of economic development shall
206 jointly prepare an annual report detailing the marketing opportunities approved under
207 the provisions of paragraph (b) of subdivision (1) of this subsection. The report shall
208 include, but not be limited to:

209 (a) The goals and strategy behind each marketing opportunity approved under
210 the provisions of paragraph (b) of subdivision (1) of this subsection;

211 (b) The names of all production companies approved by the film commission
212 and the department of economic development to provide alternative marketing
213 opportunities;

214 (c) The estimated value to the state of each approved alternative marketing
215 opportunity compared to the estimated value of the Missouri promotional logo; and

216 (d) The names of all production companies who chose to include the Missouri
217 promotional logo in their final production instead of offering the state an alternative
218 marketing proposal.

219

220 The report required under this subdivision shall be completed not later than January
221 first of each year and presented to each member of the house committee on ways and
222 means, the senate committee on ways and means, the senate committee on economic
223 development, the house committee on economic development, the house special
224 committee on tourism, and any successor committees thereto.

225 4. (1) For any production company or qualified interactive entertainment
226 production company that invests in a state-certified production approved by the film
227 commission and the department of economic development and whose average annual
228 total production expenditures in this state exceeded thirty million dollars for the three
229 preceding tax years, there shall be allowed an income tax credit against its state tax
230 liability, subject to the additional limitations set forth in this subsection. For purposes of
231 this subsection, the excess base investment in this state is computed by taking the
232 current year's production expenditures in a state-certified production and subtracting
233 the average of the annual total production expenditures for the three preceding tax
234 years. The tax credit shall be calculated as follows:

235 (a) If the excess base investment in this state equals or exceeds two hundred fifty
236 thousand dollars for qualified interactive entertainment production activities on or after

237 **January 1, 2024, the production company or qualified interactive entertainment**
238 **production company shall be allowed a tax credit of twenty percent of such excess base**
239 **investment; and**

240 **(b) The production company or qualified interactive entertainment production**
241 **company shall be allowed an additional tax credit equal to ten percent of the excess base**
242 **investment if the qualified production activities include a qualified Missouri promotion.**
243 **Such additional tax credit shall be allowed for any qualified production that includes a**
244 **qualified Missouri promotion upon its release to the general public. In lieu of the**
245 **inclusion of the Missouri promotional logo, the production company or qualified**
246 **interactive entertainment production company may offer marketing opportunities to be**
247 **evaluated by the department of economic development to ensure that they offer equal or**
248 **greater promotional value to the state.**

249 **(2) The film commission and the department of economic development shall**
250 **prepare an annual report detailing the marketing opportunities they have approved**
251 **under the provisions of paragraph (b) of subdivision (1) of this subsection. The report**
252 **shall include, but not be limited to:**

253 **(a) The goals and strategy behind each marketing opportunity approved under**
254 **the provisions of paragraph (b) of subdivision (1) of this subsection;**

255 **(b) The names of all production companies approved by the film commission**
256 **and the department of economic development to provide alternative marketing**
257 **opportunities;**

258 **(c) The estimated value to the state of each approved alternative marketing**
259 **opportunity compared to the estimated value of the Missouri promotional logo; and**

260 **(d) The names of all production companies who chose to include the Missouri**
261 **promotional logo in their final production instead of offering the state an alternative**
262 **marketing proposal.**

263

264 **The report required under this subdivision shall be completed not later than January**
265 **first of each year and presented to each member of the house committee on ways and**
266 **means, the senate committee on ways and means, the senate committee on economic**
267 **development, the house committee on economic development, the house special**
268 **committee on tourism, and any successor committees thereto.**

269 **5. (1) For tax years beginning on or after January 1, 2024, the amount of tax**
270 **credits allowed under this section for qualified interactive entertainment production**
271 **companies shall not exceed twelve million five hundred thousand dollars for each tax**
272 **year. Beginning on or after January 1, 2024, qualified interactive entertainment**
273 **production companies are eligible for tax credits for prereleased interactive game**

274 production; provided, however, that such credits shall not be available for a period that
275 exceeds three tax years.

276 (2) The maximum allowable credit claimed for a qualified interactive
277 entertainment production company shall not exceed one million five hundred
278 thousand dollars in any single tax year.

279 (3) Qualified interactive entertainment production companies seeking to claim a
280 tax credit under the provisions of this section shall submit an application to the film
281 commission and the department of economic development for preapproval of such tax
282 credit. The department of economic development shall preapprove the tax credits based
283 on the order in which properly completed applications were submitted. In the event
284 that two or more applications are submitted on the same day and the amount of funds
285 available is not sufficient to fully fund the tax credits requested, the department of
286 economic development shall prorate the available funds between or among the
287 applicants.

288 (4) No qualified interactive entertainment production company shall be allowed
289 to claim an amount of tax credits under this section for any single tax year in excess of
290 its total aggregate payroll expended to employees working within this state for the tax
291 year that the qualified interactive entertainment production company claims the tax
292 credits. Any amount in excess of such limit shall not be carried forward to the
293 succeeding tax years' state tax liability, nor shall such excess amount be assigned, sold,
294 or transferred to any other taxpayer.

295 (5) Before the film commission and department of economic development issues
296 its approval to the qualified interactive entertainment production company for the
297 qualified production activities related to interactive entertainment, the qualified
298 interactive entertainment production company shall certify that:

299 (a) The qualified interactive entertainment production company maintains a
300 business location physically located in this state; and

301 (b) The qualified interactive entertainment production company had expended a
302 total aggregate payroll of two hundred fifty thousand dollars or more on or after
303 January 1, 2024, for employees working within this state during the tax year of the
304 qualified interactive entertainment production company.

305 (6) The film commission and department of economic development shall issue a
306 certification that the qualified interactive entertainment production company meets the
307 requirements under subdivision (5) of this subsection. The qualified interactive
308 entertainment production company shall provide such certification to the film
309 commission and department of economic development. The film commission and the

310 department of economic development shall not approve a tax credit claim under this
311 section until they receive such certification.

312 (7) For tax years beginning on or after January 1, 2024, the qualified interactive
313 entertainment production company shall report to the department of revenue on its
314 Missouri income tax return the monthly average number of full-time employees subject
315 to Missouri income tax withholding for each respective tax year. For purposes of this
316 section, the term "full-time employee" shall have the same meaning as the term is
317 defined under section 620.2005.

318 (8) Notwithstanding section 32.057 and any other state tax confidentiality law,
319 the department of revenue shall report annually to the house committee on ways and
320 means and the senate committee on ways and means, and any successor committees
321 thereto. The report shall include the name, tax year the credit was claimed, and
322 monthly average number of full-time employees for each qualified interactive
323 entertainment production company. The first report shall be submitted before July
324 1, 2025, and each tax year thereafter before July first.

325 6. Notwithstanding any provision of law to the contrary, any production
326 company or qualified interactive entertainment production company that claims the
327 credit authorized under this section shall not simultaneously receive any additional tax
328 credits or exemptions under this chapter or additional benefits available to the company
329 under any other state programs for which the company is eligible including, but not
330 limited to, the Missouri one start jobs training program under sections 620.800 to
331 620.809, the real property tax increment allocation redevelopment act under sections
332 99.800 to 99.865, the Missouri downtown and rural economic stimulus act under
333 sections 99.915 to 99.980, the Missouri quality jobs act under sections 620.1875 to
334 620.1890, or the Missouri works program under sections 620.2000 to 620.2020.

335 7. Any tax credits under this section with respect to a state-certified production
336 earned by a production company or qualified interactive entertainment production
337 company and previously claimed but not used by such production company or qualified
338 interactive entertainment production company against its income tax may be
339 transferred or sold in whole or in part by such production company or qualified
340 interactive entertainment production company to another Missouri taxpayer, subject to
341 the following conditions:

342 (1) Such production company or qualified interactive entertainment production
343 company shall make only a single transfer or sale of tax credits earned in a tax year;
344 however, the transfer or sale may involve one or more transferees;

345 (2) Such production company or qualified interactive entertainment production
346 company shall submit to the department of economic development and the department

347 of revenue a written notification of any transfer or sale of tax credits within thirty days
348 after the transfer or sale of such tax credits. The notification shall include such
349 production company's or qualified interactive entertainment production company's tax
350 credit balance prior to transfer, the credit certificate number, the remaining balance
351 after transfer, all tax identification numbers for each transferee, the date of transfer, the
352 amount transferred, and any other information required by the department of economic
353 development or the department of revenue;

354 (3) Failure to comply with this subsection shall result in the disallowance of the
355 tax credit until the production company or qualified interactive entertainment
356 production company is in full compliance;

357 (4) The transfer or sale of this tax credit does not extend the time in which such
358 tax credit can be used. The carry-forward period for a tax credit that is transferred or
359 sold shall begin on the date on which the tax credit was originally earned or the date on
360 which the final certification for such tax credit was issued for a tax credit subject to the
361 provisions of subsection 10 of this section;

362 (5) A transferee shall have only such rights to claim and use the tax credit that
363 were available to such production company or qualified interactive entertainment
364 production company at the time of the transfer. To the extent that such production
365 company or qualified interactive entertainment production company did not have rights
366 to claim or use the tax credit at the time of the transfer, the department of revenue shall
367 either disallow the tax credit claimed by the transferee or recapture the tax credit from
368 the transferee; provided, however, that the department of revenue shall not recapture a
369 tax credit from the transferee if the tax credit was issued a valid final certification under
370 subsection 10 of this section. The department of revenue shall establish by rule the
371 processes of recapture. The transferee's recourse is against such production company
372 or qualified interactive entertainment production company; and

373 (6) The transferee shall acquire the tax credits in this section for a minimum of
374 sixty percent of the amount of the tax credits so transferred.

375 8. The credit granted under this section shall be subject to the following
376 conditions and limitations; provided, however, that this subsection shall not apply to a
377 production company subject to the requirements of subsection 9 or 10 of this section:

378 (1) The credit may be taken beginning with the tax year in which the production
379 company or qualified interactive entertainment production company has met the
380 investment requirement. For each year in which such production company or qualified
381 interactive entertainment production company either claims or transfers the credit, the
382 production company or qualified interactive entertainment production company shall
383 attach a schedule to the production company's or qualified interactive entertainment

384 production company's Missouri income tax return, which shall set forth the following
385 information, at a minimum:

386 (a) A description of the qualified production activities, along with the
387 certification from the film commission and department of economic development;

388 (b) A detailed listing of the employee names, Social Security numbers, and
389 Missouri wages when salaries are included in the base investment;

390 (c) The amount of tax credit claimed for the tax year;

391 (d) Any tax credit previously taken by the production company or qualified
392 interactive entertainment production company against Missouri income tax liabilities;

393 (e) The amount of tax credit carried over from prior years;

394 (f) The amount of tax credit utilized by the production company or qualified
395 interactive entertainment production company in the current tax year; and

396 (g) The amount of tax credit to be carried over to subsequent tax years;

397 (2) In the initial year in which the production company or qualified interactive
398 entertainment production company claims the credit granted in this section, the
399 production company or qualified interactive entertainment production company shall
400 include in the description of the qualified production activities required by paragraph
401 (a) of subdivision (1) of this subsection information demonstrating that the activities
402 included in the base investment or excess base investment equal or exceed two hundred
403 fifty thousand dollars on or after January 1, 2024, for qualified interactive
404 entertainment production companies; and

405 (3) In no event shall the amount of the tax credit under this section for a tax year
406 exceed the production company's or qualified interactive entertainment production
407 company's state tax liability. Any unused credit amount may be carried forward for
408 five years from the close of the tax year in which the investment occurred. No such
409 credit shall be allowed to a production company or qualified interactive entertainment
410 production company against prior tax years' state tax liability.

411 9. (1) For any projects certified by the film commission and the department of
412 economic development on or after January 1, 2024, the tax credit provided for in this
413 section if covered under the schedule provided in subdivision (1) of subsection 10 of this
414 section shall not be allowed, claimed, assigned, sold, transferred, or utilized in any
415 manner by a production company until final certification is issued under subsection 10
416 of this section and except under the conditions and limitations of this subsection.

417 (2) A production company seeking the tax credit allowed by this section shall
418 apply for the tax credit in the manner provided by the department of revenue within one
419 year from the date that it completes a state-certified production. The following

420 information shall be submitted with the application or prior to the commencement of an
421 audit required by subsection 10 of this section:

422 (a) A description of the state-certified production, along with its certification as a
423 state-certified production by the film commission and department of economic
424 development;

425 (b) A detailed accounting of all qualified production activities and the attendant
426 production expenditures included in the base investment for the state-certified
427 production;

428 (c) A detailed listing of the employee names, Social Security numbers, and
429 Missouri wages when salaries are included in the base investment;

430 (d) Receipts for tangible personal property included in the base investment as
431 requested by the department of revenue or the auditor hired to conduct the audit for the
432 state-certified production;

433 (e) Contracts for goods or services included in the base investment as requested
434 by the department of revenue or the auditor hired to conduct the audit for the state-
435 certified production;

436 (f) An Internal Revenue Service Form W-9 completed and issued by each vendor
437 for which expenditures are included in the base investment as requested by the
438 department of revenue or the auditor hired to conduct the audit for the state-certified
439 production;

440 (g) A description of the status of the distribution of the state-certified production
441 and information related to any qualified Missouri promotion connected with such
442 production;

443 (h) The total amount of the tax credit sought for the state-certified production;
444 and

445 (i) A statement affirming that the contents of the application are true and
446 correct.

447 (3) If a production company is issued final certification of a tax credit under
448 subsection 10 of this section, such tax credit shall be considered earned in the tax year in
449 which it is issued final certification.

450 (4) For each tax year in which the production company either claims or transfers
451 the tax credit, the production company shall attach a schedule to the production
452 company's Missouri income tax return that shall set forth the following information, at
453 a minimum:

454 (a) The amount of tax credit claimed for the tax year;

455 (b) Any tax credit previously taken by the production company against Missouri
456 income tax liabilities;

- 457 (c) The amount of tax credit carried over from prior tax years;
- 458 (d) The amount of tax credit utilized by the production company in the current
459 tax year; and
- 460 (e) The amount of tax credit to be carried over to subsequent tax years.
- 461 (5) In no event shall the amount of the tax credit subject to subsection 10 of this
462 section for a tax year exceed the production company's state tax liability. Any unused
463 credit amount shall be allowed to be carried forward for three tax years from the close
464 of the tax year in which the tax credit was issued its final certification under subsection
465 10 of this section. No such credit shall be allowed the production company against prior
466 tax years' state tax liability.
- 467 (6) This subsection shall not apply to qualified interactive entertainment
468 production companies.
- 469 10. (1) (a) For any project certified by the film commission and the department
470 of economic development on or after January 1, 2024, a tax credit allowed by this
471 section to a production company shall not be claimed, assigned, sold, transferred, or
472 utilized in any manner until the production company applies for the tax credit as
473 provided in subsection 9 of this section and the department of revenue issues a final
474 certification of the tax credit under this subsection if the total amount of such tax credit
475 sought for the project exceeds two million five hundred thousand dollars.
- 476 (b) For any project certified by the film commission and the department of
477 economic development on or after January 1, 2025, a tax credit allowed by this section
478 to a production company shall not be claimed, assigned, sold, transferred, or utilized in
479 any manner until the production company applies for the tax credit as provided in
480 subsection 9 of this section and the department of revenue issues a final certification of
481 the tax credit under this subsection if the total amount of such tax credit sought for the
482 project exceeds one million two hundred fifty thousand dollars.
- 483 (c) For any project certified by the film commission and the department of
484 economic development on or after January 1, 2026, a tax credit allowed by this section
485 to a production company shall not be claimed, assigned, sold, transferred, or utilized in
486 any manner until the production company applies for the tax credit as provided in
487 subsection 9 of this section and the department of revenue issues a final certification of
488 the tax credit under this subsection.
- 489 (2) In accordance with the schedule provided in subdivision (1) of this
490 subsection, prior to certifying a tax credit under this section, an audit of each tax credit
491 allowed by this section shall be conducted by an auditor in good standing with the
492 Missouri state board of accountancy.
- 493 (3) Each audit shall:

494 (a) Be completed in accordance with this section and procedures developed by
495 the department of revenue;

496 (b) Utilize sampling methods that the department of revenue may adopt;

497 (c) Follow regulations that shall be published by the department of revenue
498 regarding expenditures incurred with related taxpayers as such term is defined in
499 section 135.100;

500 (d) Verify each reported expenditure that is included in the audit and identify
501 and exclude each such expenditure that does not fully meet the conditions of this section;

502 (e) Exclude any expenditure not submitted with or that was incurred after the
503 application required by subsection 9 of this section was submitted; and

504 (f) Be submitted to the department of revenue, which shall review the audit,
505 make adjustments as necessary, and issue a final certification to the production
506 company.

507 (4) The department of revenue shall review each audit, perform additional
508 auditing as necessary, adjust the value of the tax credit as necessary, finalize the audit,
509 and issue the final certification of the tax credit to the taxpayer.

510 (5) The cost of any such audit shall be borne by the production company and
511 shall not be included as an expenditure claimed under this section.

512 (6) This subsection shall not apply to qualified interactive entertainment
513 production companies.

514 11. The department of economic development shall determine through the
515 promulgation of rules and regulations which projects qualify for the tax credits
516 authorized under this section. The department of economic development and
517 department of revenue shall promulgate all necessary rules and regulations for the
518 administration of this section. Any rule or portion of a rule, as that term is defined in
519 section 536.010, that is created under the authority delegated in this section shall
520 become effective only if it complies with and is subject to all of the provisions of chapter
521 536 and, if applicable, section 536.028. This section and chapter 536 are nonseverable
522 and if any of the powers vested with the general assembly under chapter 536 to review,
523 to delay the effective date, or to disapprove and annul a rule are subsequently held
524 unconstitutional, then the grant of rulemaking authority and any rule proposed or
525 adopted after August 28, 2023, shall be invalid and void.

526 12. Under section 23.253 of the Missouri sunset act:

527 (1) The provisions of this section shall automatically sunset December thirty-first
528 six years after the effective date of this section unless reauthorized by an act of the
529 general assembly;

530 (2) If such provisions are reauthorized, the provisions of this section shall
531 automatically sunset December thirty-first twelve years after the effective date of the
532 reauthorization of such provisions; and

533 (3) This section shall terminate on September first of the calendar year
534 immediately following the calendar year in which the provisions of this section are
535 sunset.

135.752. 1. This act shall be known and may be cited as the "Missouri
2 Entertainment Industry Postproduction Investment Act".

3 2. As used in this section, the following terms mean:

4 (1) "Affiliates", those entities that are:

5 (a) Included in the postproduction company's affiliated group as defined in
6 Section 1504(a) of the Internal Revenue Code, as amended; and

7 (b) Included on the same consolidated federal and Missouri income tax returns
8 for all pertinent tax years;

9 (2) "Multimarket commercial distribution", paid commercial distribution media
10 buys that extend to markets outside the state;

11 (3) "Postproduction company", a company and its affiliates that:

12 (a) Maintain a business location physically located in this state;

13 (b) Have a total aggregate payroll of two hundred fifty thousand dollars or more
14 for employees working within the state in the tax year the postproduction company
15 claims the tax credits; and

16 (c) Are engaged in qualified postproduction activities that have been approved
17 by the department of economic development.

18

19 The term "postproduction company" shall not be construed to include any form of
20 business owned, affiliated, or controlled, in whole or in part, by any company or person
21 that is in default on any tax obligation of the state, or a loan made by the state or a loan
22 guaranteed by the state. In the instance of a "work for hire" in which one
23 postproduction company hires another postproduction company to engage in qualified
24 postproduction activities for pay, the hired company shall be considered a service
25 provider for the hiring company and the hiring company shall be entitled to the
26 postproduction tax credit only if the department of revenue certifies that the hired
27 company is a Missouri company employing workers in this state and that the work is
28 done solely in this state;

29 (4) "Qualified postproduction activities", the activities performed on a qualified
30 production employing traditional, emerging, and new workflow techniques used in
31 postproduction for picture, sound, and music editing, rerecording and mixing, visual

32 effects, graphic design, original scoring, animation, musical composition, and other
33 activities performed after initial production and including activities performed on
34 previously produced and edited content;

35 (5) "Qualified postproduction expenditures", expenditures incurred in this state
36 directly in qualified postproduction activities including, but not limited to:

37 (a) Costs associated with photography and sound synchronization;

38 (b) Expenditures, excluding license fees, incurred with Missouri companies for
39 sound recordings and musical compositions, lighting, and related services and
40 materials;

41 (c) Editing and related services;

42 (d) Rental of facilities and equipment;

43 (e) Leasing of vehicles;

44 (f) Costs of food and lodging;

45 (g) Digital or tape editing, film processing, transfers of film to tape or digital
46 format, sound mixing, computer graphics services, special effects services, and
47 animation services;

48 (h) Total aggregate payroll;

49 (i) Airfare, if purchased through a Missouri travel agency or travel company;

50 (j) Insurance costs and bonding, if purchased through a Missouri insurance
51 agency; and

52 (k) Other direct postproduction costs for the project in accordance with
53 generally accepted entertainment industry practices.

54

55 This term includes expenditures incurred in this state for footage shot inside or outside
56 this state;

57 (6) "Qualified production":

58 (a) Only the following productions of film, video, or digital project: feature films,
59 series, pilots, movies for television, televised commercial advertisements, music videos,
60 interactive entertainment, or sound recording projects used in feature films, series,
61 pilots, or movies for television;

62 (b) The term "qualified production" shall include projects shot, recorded, or
63 originally created in either short or long form, animation and music; fixed on a delivery
64 system which includes, but is not limited to, film, videotape, computer disc, laser disc,
65 and any element of the digital domain, from which the program is viewed or
66 reproduced; and which are intended for multimarket commercial distribution via
67 theaters, video on demand, direct to DVD, digital platforms designed for the
68 distribution of interactive games, or licensing for exhibition by individual television

69 stations, groups of stations, networks, advertiser-supported sites, cable television
70 stations, or public broadcasting stations; and

71 (c) The term "qualified production activities" shall not be construed to include
72 the coverage of news and athletic events, local interest programming, instructional
73 videos, and corporate videos;

74 (7) "State tax liability", any liability for the tax imposed under chapter 143,
75 excluding withholding tax under sections 142.191 to 143.265;

76 (8) "Total aggregate payroll", the total sum expended by a postproduction
77 company on salaries paid to employees working within this state on qualified
78 postproduction activities.

79 3. (1) A postproduction company that has incurred qualified postproduction
80 expenditures of at least five hundred thousand dollars in a tax year shall be allowed a
81 tax credit against its state tax liability, subject to the conditions and limitations set forth
82 in this section.

83 (2) (a) The tax credit allowed shall be equal to twenty percent of the qualified
84 postproduction expenditures actually invested and expended by the postproduction
85 company in a tax year.

86 (b) An additional tax credit equal to ten percent of the qualified postproduction
87 expenditures shall be allowed if the qualified production expenditures, as defined in
88 section 135.751, were incurred in this state.

89 (3) The amount of tax credits allowed to a postproduction company under this
90 section for any single tax year shall not exceed the postproduction company's total
91 aggregate payroll expended to employees working within this state for the tax year the
92 postproduction company claims the tax credit.

93 4. (1) A postproduction company that has incurred qualified postproduction
94 expenditures of at least one hundred thousand dollars but less than five hundred
95 thousand dollars and has a total aggregate payroll in this state of at least one hundred
96 thousand dollars but less than five hundred thousand dollars in a tax year shall be
97 allowed a tax credit against its state tax liability, subject to the additional limitations set
98 forth in this section.

99 (2) The tax credit allowed shall be equal to twenty percent of the qualified
100 postproduction expenditures actually invested and expended by the postproduction
101 company in a tax year.

102 (3) The aggregate amount of tax credits allowed under this subsection for
103 smaller postproduction companies shall not exceed one million dollars per tax year.
104 This one million dollar aggregate amount of tax credits is separate from, and shall not
105 be included in, the aggregate amount of tax credits under subsection 5 of this section.

106 **5. For tax years beginning on or after January 1, 2024, the tax credits allowed**
107 **under this section for all postproduction companies shall be subject to an aggregate**
108 **annual cap of ten million dollars. If the aggregate amount of tax credits claimed by**
109 **taxpayers under this section during a year is less than the aggregate annual cap**
110 **applicable to such year, the unclaimed portion of the aggregate annual cap shall be**
111 **added to the aggregate annual cap applicable to the next succeeding year or years until**
112 **it is fully claimed.**

113 **6. (1) The maximum allowable tax credit under this section claimed by a single**
114 **postproduction company shall not exceed, in any single tax year, twenty percent of the**
115 **aggregate amount of tax credits available for such tax year under subsection 5 of this**
116 **section, including the amount of any aggregate annual caps rolled over from prior years.**

117 **(2) Postproduction companies seeking to claim a tax credit under this section**
118 **shall submit an application to the department of economic development for preapproval**
119 **of such tax credit. The department of economic development shall preapprove the tax**
120 **credits based on the order in which properly completed applications were submitted. In**
121 **the event that two or more applications are submitted on the same day and the amount**
122 **of funds available are not sufficient to fully fund the tax credits requested, the**
123 **department of economic development shall prorate the available funds between or**
124 **among the applicants.**

125 **7. For tax years beginning on or after January 1, 2024, the postproduction**
126 **company shall report to the department of revenue on its Missouri income tax return**
127 **the monthly average number of full-time employees subject to Missouri income tax**
128 **withholding for the tax year. For purposes of this section, the term "full-time**
129 **employee" shall have the same meaning as the term is defined under section 620.2005.**
130 **Notwithstanding section 32.057 and any other state tax confidentiality law, for such tax**
131 **years, the department shall annually report to the house committee on ways and means,**
132 **the senate committee on ways and means, and any successor committees thereto. The**
133 **report shall include the name, tax year the credit was claimed, and monthly average**
134 **number of full-time employees for each postproduction company. The first report shall**
135 **be submitted before July 1, 2025, and each year thereafter before July first.**

136 **8. (1) Any qualified postproduction expenditures for which a production**
137 **company claims a tax credit under section 135.751 shall not be eligible for**
138 **postproduction expenditures for purposes of the credit authorized under this section.**

139 **(2) Notwithstanding any provision of law to the contrary, any postproduction**
140 **company that claims the credit authorized under this section shall not simultaneously**
141 **receive any additional tax credits or exemptions under this chapter or additional**
142 **benefits available to the company under any other state programs for which the**

143 company is eligible and which utilize withholding tax from the new jobs including, but
144 not limited to, the Missouri one start jobs training program under sections 620.800 to
145 620.809, the real property tax increment allocation redevelopment act under sections
146 99.800 to 99.865, the Missouri downtown and rural economic stimulus act under
147 sections 99.915 to 99.980, the Missouri quality jobs act under sections 620.1875 to
148 620.1890, or the Missouri works program under sections 620.2000 to 620.2020.

149 9. The credit granted under this section shall be subject to the following
150 conditions and limitations:

151 (1) The credit may be taken beginning with the tax year in which the
152 postproduction company has incurred the qualified postproduction expenditures. For
153 each tax year in which such postproduction company either claims or transfers the
154 credit, the postproduction company shall attach a schedule to the postproduction
155 company's Missouri income tax return that shall set forth the following information, at
156 a minimum:

157 (a) A description of the qualified postproduction activities;

158 (b) A certification that the postproduction company maintains a business
159 location physically located in this state;

160 (c) A certification that the postproduction company expended a total aggregate
161 payroll of two hundred fifty thousand dollars or more for employees working within this
162 state during the tax year of the postproduction company;

163 (d) In the initial tax year in which the postproduction company claims the credit
164 granted in this section only, information demonstrating that the qualified
165 postproduction expenditures equal or exceed five hundred thousand dollars during
166 such tax year;

167 (e) A detailed listing of the employee names, Social Security numbers, and
168 Missouri wages when salaries are included in the qualified postproduction expenditures;

169 (f) The amount of tax credit claimed for the tax year;

170 (g) The amount of tax credit carried over from prior tax years;

171 (h) The amount of tax credit utilized by the postproduction company in the
172 current tax year; and

173 (i) The amount of tax credit to be carried over to subsequent tax years.

174

175 The postproduction company shall file a copy of the schedule with the department of
176 economic development within thirty days after the schedule is filed with its income tax
177 return;

178 (2) Where the amount of tax credits under this section exceeds the
179 postproduction company's state tax liability in a tax year, any unused credit amount

180 may be carried forward for five tax years from the close of the tax year in which the
181 investment occurred. No such credit shall be allowed to a postproduction company
182 against prior tax years' state tax liability; and

183 (3) Any tax credits earned by a postproduction company under this section and
184 previously claimed but not used by such postproduction company against its income tax
185 may be transferred or sold in whole or in part by such postproduction company to
186 another Missouri taxpayer, subject to the following conditions:

187 (a) Such postproduction company shall make only a single transfer or sale of tax
188 credits earned in a tax year; however, the transfer or sale may involve one or more
189 transferees;

190 (b) Such postproduction company shall submit to the department of economic
191 development and to the department of revenue a written notification of any transfer or
192 sale of tax credits within thirty days after the transfer or sale of such tax credits. The
193 notification shall include such postproduction company's tax credit balance prior to
194 transfer, the credit certificate number, the remaining balance after transfer, all tax
195 identification numbers for each transferee, the date of transfer, the amount transferred,
196 and any other information required by the department of economic development or the
197 department of revenue;

198 (c) Failure to comply with this subdivision shall result in the disallowance of the
199 tax credit until the postproduction company is in full compliance;

200 (d) The transfer or sale of this tax credit does not extend the time in which such
201 tax credit can be used. The carry-forward period for a tax credit that is transferred or
202 sold shall begin on the date on which the tax credit was originally earned;

203 (e) A transferee shall have only such rights to claim and use the tax credit that
204 was available to such postproduction company at the time of the transfer, except for the
205 use of the credit in paragraph (b) of subdivision (1) of this subsection. To the extent that
206 such postproduction company did not have rights to claim or use the tax credit at the
207 time of the transfer, the department of revenue shall either disallow the tax credit
208 claimed by the transferee or recapture the tax credit from the transferee. The
209 department of revenue shall establish by rule the processes of recapture. The
210 transferee's recourse is against such postproduction company; and

211 (f) Any postproduction company claiming, transferring, or selling the tax credit
212 shall be required to reimburse the department of revenue for any department-initiated
213 audits relating to the tax credit. This paragraph shall not apply to routine tax audits of
214 a taxpayer that may include the review of the credit provided in this section.

215 10. The department of revenue and the department of economic development
216 shall promulgate all necessary rules and regulations for the administration of this

217 **section. Any rule or portion of a rule, as that term is defined in section 536.010, that is**
218 **created under the authority delegated in this section shall become effective only if it**
219 **complies with and is subject to all of the provisions of chapter 536 and, if applicable,**
220 **section 536.028. This section and chapter 536 are nonseverable and if any of the powers**
221 **vested with the general assembly under chapter 536 to review, to delay the effective date,**
222 **or to disapprove and annul a rule are subsequently held unconstitutional, then the grant**
223 **of rulemaking authority and any rule proposed or adopted after August 28, 2023, shall**
224 **be invalid and void.**

225 **11. Under section 23.253 of the Missouri sunset act:**

226 **(1) The provisions of this section shall automatically sunset December thirty-first**
227 **six years after the effective date of this section unless reauthorized by an act of the**
228 **general assembly;**

229 **(2) If such provisions are reauthorized, the provisions of this section shall**
230 **automatically sunset December thirty-first twelve years after the effective date of the**
231 **reauthorization of such provisions; and**

232 **(3) This section shall terminate on September first of the calendar year**
233 **immediately following the calendar year in which the provisions of this section are**
234 **sunset.**

✓