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No. 1164

H.P. 798

House of Representatives, March 31, 2015

An Act To Promote Tourism and Foster Economic Development

Reference to the Committee on Labor, Commerce, Research and Economic Development suggested and ordered printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative HAMANN of South Portland.
Cosponsored by Senator VALENTINO of York and
Representatives: MALABY of Hancock, MARTIN of Eagle Lake, MONAGHAN of Cape
Elizabeth, PETERSON of Rumford, STANLEY of Medway, Senators: DUTREMBLE of
York, HILL of York, PATRICK of Oxford.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 5 MRSA §13090-L**, as amended by PL 2011, c. 285, §1, is further
3 amended to read:

4 **§13090-L. Visual media production and major visual media production certification**

5 **1. Generally.** A visual media production company that intends to undertake a visual
6 media production in this State may apply to the department to have the production, or a
7 portion of the production, certified under subsection 3 3-B for purposes of the visual
8 media production reimbursement pursuant to Title 36, chapter 919-A and the credit under
9 Title 36, section 5219-Y. A major visual media production company that intends to
10 undertake a major visual media production in this State may apply to the department to
11 have the production, or a portion of the production, certified under subsection 3-B for the
12 purpose of the major visual media production credit under Title 36, section 5219-NN.

13 **2-A. Definitions.** As used in this section, unless the context otherwise indicates, the
14 following terms have the following meanings.

15 A. "Digital media project" means visual and audio content on an electronic, digital
16 medium and created, referred to and distributed electronically. "Digital media
17 project" includes publicly accessible websites, computer multimedia, video and
18 computer games and digital video discs.

19 B. "Maine State Film Office" means the Maine State Film Office established in the
20 Office of Tourism pursuant to section 13090-I.

21 B-1. "Major visual media production" means a visual media production with an
22 overall budget, as defined in rules adopted by the department, that is greater than
23 \$1,000,000.

24 B-2. "Major visual media production company" means a person engaged in the
25 business of producing a major visual media production.

26 B-3. "Major visual media production expense" means an expense directly incurred in
27 this State for preproduction, production or postproduction of a major visual media
28 production certified under this section. "Major visual media production expense"
29 includes major visual media production wages, payments to a temporary employee-
30 leasing company, as defined in Title 36, section 6901, subsection 3-A, and other
31 contractual payments for the services of individuals working in the State. "Major
32 visual media production expense" includes the cost of construction; operations;
33 editing and related services; music, photography and film processing, including
34 transferring film to tape or a digital format; sound recording, mixing and
35 synchronization; lighting, makeup, wardrobe and accessories; transportation; food
36 and lodging for cast and crew; insurance and bonding; and the rental of facilities and
37 equipment, including location fees. "Major visual media production expense" does
38 not include expenses incurred in marketing or advertising a major visual media
39 production or in printing or disseminating a major visual media production.

40 B-4. "Major visual media production wages" means wages and salaries paid to
41 below-the-line personnel on which taxes have been paid or accrued. For purposes of

1 this paragraph, "below-the-line personnel" means nonstarring cast members and the
2 technical preproduction, production and postproduction staff of the major visual
3 media production, including, but not limited to, staff for hair, makeup, wardrobe,
4 accessories, lighting, rigging, electric, camera operations, photography, composing
5 and editing, but not including the director, starring cast, writers and producers of the
6 major visual media production.

7 C. "Person" has the same meaning as in Title 36, section 111, subsection 3.

8 D. "Visual media production" means a single-medium or multimedia feature film,
9 television show or series, video, digital media project or photographic project
10 intended for a local, regional, national or international audience and fixed on film,
11 videotape, computer disk, laser disc or other delivery medium, including the Internet,
12 that can be viewed or reproduced and that is exhibited in theaters or by individual
13 television stations or groups of stations, television networks or cable television
14 stations or via other means or licensed for home viewing or use. "Visual media
15 production" does not include:

16 (1) A news, current events or public programming show or a program that
17 includes weather or market reports;

18 (2) A talk show;

19 (3) A sports event or activity;

20 (4) A gala presentation or awards show;

21 (5) A finished production that solicits funds; or

22 (6) A production for which records are required to be maintained by 18 United
23 States Code, Section 2257.

24 E. "Visual media production company" means a person engaged in the business of
25 producing a visual media production.

26 F. "Visual media production expense" means an expense directly incurred in this
27 State for preproduction, production or postproduction of a visual media production
28 certified under this section. "Visual media production expense" includes wages and
29 salaries of individuals employed in the production on which taxes have been paid or
30 accrued if those wages do not exceed \$50,000 per individual and payments to a
31 temporary employee-leasing company, as defined in Title 36, section 6901,
32 subsection 3-A, and other contractual payments for the services of individuals
33 working in the State if those payments do not exceed \$50,000 per individual
34 providing services in the production. "Visual media production expense" includes the
35 cost of construction; operations; editing and related services; music, photography and
36 film processing, including transferring film to tape or a digital format; sound
37 recording, mixing and synchronization; lighting, makeup, wardrobe and accessories;
38 transportation; food and lodging for cast and crew; insurance and bonding; and the
39 rental of facilities and equipment, including location fees. "Visual media production
40 expense" does not include expenses incurred in marketing or advertising a visual
41 media production or in printing or disseminating a visual media production.

1 **3. Requirements for visual media production certificate.** Applications for a
2 visual media production certificate must be made on a form prescribed and furnished by
3 the department. The applicant must:

4 A. Provide the names of the principals involved in the visual media production and
5 contact information for them;

6 B. Provide a certificate of insurance for the visual media production;

7 C. Provide financial information that demonstrates that the visual media production
8 is fully financed and that at least \$75,000 of visual media production expense will be
9 incurred for the visual media production certified in accordance with ~~this~~ subsection
10 3-B;

11 D. Provide data demonstrating that the visual media production will benefit the
12 people of the State by increasing opportunities for employment and will strengthen
13 the economy of the State;

14 E. Agree to include, in the certified visual media production, an on-screen credit for
15 the State of Maine. The exact wording and size of that credit must be determined in
16 rules adopted by the Maine State Film Office and the department. The Maine State
17 Film Office or the department may, at its discretion, exempt visual media productions
18 from this requirement. Rules adopted pursuant to this paragraph are routine technical
19 rules as defined in chapter 375, subchapter 2-A;

20 F. Provide evidence that the visual media production company is not owned by,
21 affiliated with or controlled by, in whole or in part, a person that is in default on a
22 loan made by the State or a loan guaranteed by the State;

23 G. Provide any other information required by the department; ~~and~~

24 H. Provide a projected schedule for preproduction, production and postproduction of
25 the visual media production that shows that the production will begin within 60 days
26 after certification pursuant to ~~this~~ subsection- 3-B; ~~and~~

27 I. Provide any other information required to demonstrate to the satisfaction of the
28 commissioner that the visual media production company has met, or will meet, the
29 requirements of this subsection.

30 ~~To qualify for a visual media production certificate, a visual media production company~~
31 ~~must demonstrate to the satisfaction of the commissioner that the visual media production~~
32 ~~company has met, or will meet, the requirements of this subsection. If the department~~
33 ~~determines that the applicant does not qualify for a visual media production certificate, it~~
34 ~~must inform the applicant of that determination in writing within 4 weeks of receiving the~~
35 ~~application. As soon as practicable, the department shall issue a visual media production~~
36 ~~certificate for a visual media production that qualifies. The department shall include with~~
37 ~~the certificate information regarding the tax credit report under subsection 4 and~~
38 ~~procedures for claiming reimbursement under Title 36, chapter 919-A and the credit~~
39 ~~under Title 36, section 5219-Y.~~

40 **3-A. Requirements for major visual media production certificate.** An
41 application for a major visual media production certificate must be made on a form
42 prescribed and furnished by the department. An applicant shall:

- 1 A. Provide payment for a nonrefundable application fee equal to 0.2% of the
2 estimated amount of the tax credit for which the major visual media production
3 company is requesting certification, which may not be less than \$200 or more than
4 \$5,000;
- 5 B. Provide the names of the principals involved in the major visual media production
6 and contact information for them;
- 7 C. Provide a certificate of insurance for the major visual media production;
- 8 D. Provide financial information that demonstrates that the major visual media
9 production is fully financed and has an overall budget of at least \$1,000,000 if
10 applying for the 25% credit under Title 36, section 5219-NN, subsection 1;
- 11 E. Provide projections of the number of positions required for the major visual media
12 production, the number of residents of the State to be employed and the economic
13 impact on the State;
- 14 F. Provide evidence that the major visual media production company is not owned
15 by, affiliated with or controlled by, in whole or in part, a person that is in default on a
16 loan made by the State or a loan guaranteed by the State;
- 17 G. Provide a projected schedule for preproduction, production and postproduction of
18 the major visual media production that shows that the production will begin within 60
19 days after certification pursuant to subsection 3-B;
- 20 H. Demonstrate, by certifying in writing, that the major visual media production
21 would not occur within the State absent the availability of the tax credit for which the
22 major visual media production company is requesting certification;
- 23 I. Include, in the certified major visual media production, an on-screen credit for the
24 State of Maine as described in subsection 3, paragraph E; and
- 25 J. Provide any other information required to demonstrate to the satisfaction of the
26 commissioner that the major visual media production company has met, or will meet,
27 the requirements of this subsection.

28 **3-B. Issuance of certificate.** The department shall issue a visual media production
29 certificate for a visual media production that qualifies under subsection 3 or a major
30 visual media production certificate for a major visual media production that qualifies
31 under subsection 3-A within 4 weeks of receipt of the application or deny the application
32 in writing. The department may deny a certificate for any reason. The department may
33 not approve a certificate that qualifies the visual media production or major visual media
34 production for a tax credit under Title 36, section 5219-Y or 5219-NN, respectively, in
35 excess of the funds appropriated for those purposes. The department shall include with
36 the certificate information regarding the tax credit report under subsection 4 and
37 procedures for claiming reimbursement under Title 36, chapter 919-A and the credits
38 under Title 36, sections 5219-Y and 5219-NN.

39 **4. Certified report.** No later than 4 weeks after completion of a certified visual
40 media production or major visual media production, the visual media production
41 company or major visual media production company shall report, in a format specified by
42 the Maine State Film Office or the department, its compliance with the requirements of

1 subsection 3 ~~with respect to the certified visual media production or 3-A~~ to the Maine
2 State Film Office.

3 **5. Department to provide information to State Tax Assessor.** The department
4 shall provide to the State Tax Assessor copies of the visual media production certificate
5 or major visual media production certificate issued pursuant to subsection ~~3~~ 3-B, together
6 with any other information reasonably required by the State Tax Assessor for the
7 administration of visual media production reimbursement under Title 36, chapter 919-A
8 and the ~~credit~~ credits under Title 36, ~~section~~ sections 5219-Y and 5219-NN.

9 **6. Rulemaking.** The department shall develop rules as necessary to administer this
10 section in cooperation with the State Tax Assessor. Rules adopted pursuant to this
11 section are routine technical rules as defined in chapter 375, subchapter 2-A.

12 **7. Report.** The Maine State Film Office shall submit a report by January 15th
13 annually to the joint standing committee of the Legislature having jurisdiction over
14 taxation matters regarding the certification and reporting process pursuant to this section
15 ~~and~~. The report must include information on the visual media production tax credit and
16 reimbursement activities pursuant to under Title 36, section 5219-Y and Title 36, chapter
17 919-A and the major visual media production tax credit under Title 36, section 5219-NN.
18 The report must include a description of any rule-making activity related to the
19 implementation of the ~~credit~~ credits and reimbursement ~~activities~~, outreach efforts to
20 visual media production companies and major visual media production companies, the
21 number of applications for the visual media production credit and tax reimbursement, the
22 number of applications for the major visual media production credit, the number of
23 credits and reimbursements granted, the revenue loss associated with the ~~credit~~ credits
24 and reimbursement and the amount of visual media production expenses and major visual
25 media production expenses generated in the State as a result of the ~~credit~~ credits and
26 reimbursement.

27 **Sec. 2. 36 MRSA §5219-NN** is enacted to read:

28 **§5219-NN. Certified major visual media production credit**

29 **1. Credit allowed.** A major visual media production company, as defined in Title 5,
30 section 13090-L, subsection 2-A, paragraph B-2, is allowed a credit against the taxes
31 imposed by this Part in an amount equal to a percentage of major visual media production
32 expenses, as defined in Title 5, section 13090-L, subsection 2-A, paragraph B-3, up to
33 25% of major visual media production expenses.

34 **2. Limitation.** Taxpayers claiming a credit under section 5219-W or 5219-Y are not
35 eligible for the credit under this section. The credit allowed by this section may be used
36 only for the taxable year in which the major visual media production, as defined in Title
37 5, section 13090-L, subsection 2-A, paragraph B-1, is completed.

38 **3. Refundable.** The credit allowed under this section is fully refundable.

39 **Sec. 3. Application.** This Act applies to tax years beginning on or after January 1,
40 2015.

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SUMMARY

This bill provides a fully refundable income tax credit for expenses and wages directly incurred in Maine by a major visual media production company, including for content that is produced for the Internet, in an amount of up to 25% of production expenses if the overall budget is greater than \$1,000,000, not including wages for starring cast or the director, writer or producers. The credit must be claimed in the taxable year in which the major visual media production is completed.

A major visual media production company must submit a nonrefundable application fee, which is 0.2% of the estimated tax credit, but may be no less than \$200 and no more than \$5,000. The Department of Economic and Community Development may deny a certificate for a visual media production or a major visual media production for any reason. The department is required to deny a certificate if it would qualify the production for tax credits in excess of the funds appropriated for that purpose.