

As Amended by House Committee

Session of 2005

HOUSE BILL No. 2443

By Committee on Economic Development

2-11

10 AN ACT creating the Kansas film production investment tax credit act.

11

12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. (a) The purpose of the Kansas film production investor
14 tax credit act is to facilitate the availability of equity investment in film
15 production businesses in the early stages of commercial development and
16 to assist in the creation and expansion of Kansas film production busi-
17 nesses, which are job and wealth creating enterprises, by granting tax
18 credits against the Kansas income tax liability of investors investing in
19 these film production businesses. The Kansas film production investor
20 tax credit act shall be administered by the Kansas technology enterprise
21 corporation with the primary goal of encouraging individuals to provide
22 seed-capital financing for emerging Kansas film production businesses
23 engaged in the development, implementation, production and commer-
24 cialization of film projects.

25 (b) This act shall be known and may be cited as the Kansas film
26 production investor tax credit act.

27 **(c) The secretary of commerce is hereby authorized to adopt**
28 **rules and regulations to implement and administer the provisions**
29 **of this act.**

30 Sec. 2. As used in this act:

31 (a) "Film production investor" and "investor" mean an accredited
32 individual investor of high net worth, as defined in 17 C.F.R. 230.501(a)
33 as in effect on the effective date of this act, who seeks high returns
34 through private investments in start-up companies and may seek active
35 involvement in film production business;

36 (b) "cash investment" means money or money equivalent in consid-
37 eration for qualified securities;

38 (c) "corporation" means the Kansas technology enterprise corpora-
39 tion, a public instrumentality created pursuant to K.S.A. 74-8101, and
40 amendments thereto;

41 (d) "Kansas film production business" means any film production
42 business owned by an individual, any partnership, association or corpo-
43 ration domiciled in Kansas, or any corporation, even if a wholly owned

1 subsidiary of a foreign corporation, that does film production business
2 primarily in Kansas or does substantially all of such film production busi-
3 nesses' production in Kansas;

4 (e) "qualified Kansas film production business" means the Kansas
5 film production businesses that are approved and certified as qualified
6 Kansas film production businesses as provided in K.S.A. 2004 Supp. 74-
7 8134, and amendments thereto;

8 (f) "qualified securities" means a cash investment through any one or
9 more forms of financial assistance as provided in this subsection that have
10 been approved in form and substance by the Kansas technology enter-
11 prise corporation. Such forms of financial assistance are: (1) Any form of
12 equity, such as: (A) A general or limited, partnership interest; (B) com-
13 mon stock; (C) preferred stock, with or without voting rights, without
14 regard to seniority position, and whether or not convertible into common
15 stock; or (D) any form of subordinate or convertible debt, or both, with
16 warrants or other means of equity conversion attached; or

17 (2) a debt instrument, such as a note or debenture that is secured or
18 unsecured, subordinated to the general creditors of the debtor and re-
19 quires no payments of principal, other than principal payments required
20 to be made out of any future profits of the debtor, for at least a seven-
21 year period after commencement of such debt instrument's term; and

22 (g) "secretary" means the secretary of the department of commerce.

23 Sec. 3. (a) A credit against the tax imposed by article 32 of chapter
24 79 of the Kansas Statutes Annotated, and amendments thereto, on the
25 Kansas taxable income of a film production investor and against the tax
26 imposed by K.S.A. 40-252, and amendments thereto, shall be allowed for
27 a cash investment in the qualified securities of a qualified Kansas film
28 production business. The credit shall be in a total amount equal to 50%
29 of such investors' cash investment in any qualified Kansas film production
30 business, subject to the limitations set forth in subsection (b). This tax
31 credit may be used in its entirety in the taxable year in which the cash
32 investment is made except that no tax credit shall be allowed in a year
33 prior to January 1, 2006. If the amount by which that portion of the credit
34 allowed by this section exceeds the investors' liability in any one taxable
35 year, beginning in the year 2006, the remaining portion of the credit may
36 be carried forward until the total amount of the credit is used. If the
37 investor is a corporation having an election in effect under subchapter S
38 or limited liability corporation of the federal internal revenue code or a
39 partnership, the credit provided by this section shall be claimed by the
40 shareholders of corporations or the partners of a partnership in the same
41 manner as shareholders or partners account for such shareholder's or
42 partner's proportionate shares of the income or loss of these corporations
43 or partnership.

1 (b) The secretary of revenue shall not allow tax credits that are at-
2 tributable to an individual investor of more than \$50,000 of cash invest-
3 ments in the qualified securities of a single Kansas film production busi-
4 ness or for cash investments in the qualified securities of more than five
5 Kansas film production businesses each year. No tax credits authorized
6 by this act shall be allowed for any cash investments in qualified securities
7 for any year after the year 2017. The cumulative aggregate amount of the
8 tax credits allowed by the secretary of revenue, pursuant to this act, shall
9 not exceed \$20,000,000. The total amount of tax credits which may be
10 allowed under this section shall not exceed \$2,000,000 per tax year.

11 (c) A cash investment in a qualified security shall be deemed to have
12 been made on the date of acquisition of the qualified security, as such
13 date is determined in accordance with the provisions of the internal rev-
14 enue code.

15 (d) Any investor that is not subject to taxation under the provisions
16 of article 32, chapter 79 of the Kansas Statutes Annotated, and amend-
17 ments thereto, and that makes a cash investment in a qualified security
18 of a qualified Kansas film production business shall be deemed to acquire
19 an interest in the nature of a transferable credit limited to an amount
20 equal to 50% of this cash investment. This interest may be transferred to
21 an investor and be claimed by this investor as a credit against the investor's
22 Kansas income tax liability beginning in the year provided in subsection
23 (a). No person shall be entitled to a refund for the interest created under
24 this section. Only the full credit for any one investment may be trans-
25 ferred and this interest may only be transferred one time. A credit ac-
26 quired by transfer shall be subject to the limitations prescribed in this
27 section. Documentation of any credit acquired by transfer shall be pro-
28 vided by the investor in the manner required by the director of taxation.

29 (e) The reasonable costs of the administration of this act, the review
30 of applications for certification as qualified Kansas film production busi-
31 nesses and the issuance of tax credits authorized by this act shall be re-
32 imburged through fees paid by the qualified Kansas film production busi-
33 nesses and the investors or the transferees of investors, according to a
34 reasonable fee schedule adopted by the corporation.

35 Sec. 4. The state of Kansas shall not be held liable for any damages
36 to any investor that makes an investment in any qualified security of a
37 qualified Kansas film production business.

38 Sec. 5. (a) Each qualified Kansas film production business for which
39 tax credits have been issued pursuant to this act shall report to the cor-
40 poration on an annual basis, the following: (1) The name, address and
41 taxpayer identification number of each film production investor who has
42 made cash investment in the qualified securities of a qualified Kansas film
43 production business and has received tax credits for this investment dur-

1 ing the preceding year and all other preceding years; (2) the amounts of
2 these cash investments by each film production investor and a description
3 of the qualified securities issued in consideration of such cash invest-
4 ments; (3) the name, address and taxpayer identification number of each
5 investor to which tax credits issued pursuant to this act have been trans-
6 ferred by the original film production investor; and (4) any additional
7 information as the corporation may require pursuant to this act.

8 (b) The corporation shall transmit annually to the governor, the sec-
9 retary, the standing committee on commerce of the senate, the standing
10 committee on economic development of the house of representatives, the
11 joint committee on economic development, and Kansas, Inc. a report,
12 based upon information received from each qualified Kansas film pro-
13 duction business for which tax credits have been issued during the pre-
14 ceding year, describing the following: (1) The manner in which the pur-
15 pose, as described in this act, has been carried out; (2) the total cash
16 investments made for the purchase of qualified securities of qualified
17 Kansas film production businesses during the preceding year and cu-
18 mulatively since the inception of this act; (3) an estimate of jobs created
19 and jobs preserved by cash investments made in qualified securities of
20 qualified Kansas film production businesses; and (4) an estimate of the
21 multiplier effect on the Kansas economy of the cash investments made
22 pursuant to this act.

23 (c) The secretary shall provide the information specified in subsection
24 (b) to the department of revenue on an annual basis. The secretary shall
25 conduct an annual review of the activities undertaken pursuant to this act
26 to ensure that tax credits issued pursuant to this act are issued in com-
27 pliance with the provisions of this act or rules and regulations promul-
28 gated by the department or the corporation with respect to this act. The
29 reasonable costs of the annual review shall be paid by the corporation
30 according to a reasonable fee schedule adopted by the secretary.

31 (d) Any violation of the reporting requirements set forth in this sec-
32 tion shall be grounds for undesignation of a qualified Kansas film pro-
33 duction business under this section.

34 (e) If the secretary determines that a film production business is not
35 in substantial compliance with the requirements of this act to maintain
36 its designation, the secretary, by written notice, shall inform the officers
37 of the qualified Kansas film production business and the film production
38 business that such film production business will lose designation as a
39 qualified Kansas film production business in 120 days from the date of
40 mailing of the notice unless such film production business corrects the
41 deficiencies and is once again in compliance with the requirements for
42 designation.

43 (f) At the end of the 120-day period, if the qualified Kansas film

1 production business is still not in substantial compliance, the secretary
2 shall send a notice of loss of designation to the film production business,
3 the corporation, the secretary of the department of revenue and to all
4 known investors in the film production business. Loss of designation of a
5 qualified Kansas film production business shall preclude the issuance of
6 any additional tax credits with respect to this film production business
7 and the corporation shall not approve the application of such film pro-
8 duction business as a qualified Kansas film production business. Upon
9 loss of the designation as a qualified Kansas film production business or
10 if a film production business loses its designation as a qualified Kansas
11 film production business under this act by moving its operations outside
12 Kansas within 10 years after receiving financial assistance under this act,
13 such film production business shall repay such financial assistance to the
14 corporation, in an amount determined by the corporation. Each qualified
15 Kansas film production business that loses such designation shall enter
16 into a repayment agreement with the corporation specifying the terms of
17 such repayment obligation.

18 (g) Film production investors in a qualified Kansas film production
19 business shall be entitled to keep all of the tax credits claimed under this
20 act.

21 (h) The department and the corporation may prepare and adopt pro-
22 cedures concerning the performance of the duties placed upon each re-
23 spective entity by this act.

24 Sec. 6. The designation of a film production business as a qualified
25 Kansas film production business shall be made by the corporation. A film
26 production business shall be so designated if the corporation determines,
27 based upon the application submitted by the film production business
28 and any additional investigation the staff of the corporation shall make,
29 that the following criteria have been or shall be satisfied:

30 (a) The film production business has a reasonable chance of success;

31 (b) the ability of investors in the film production business to receive
32 tax credits for cash investments in qualified securities of the film produc-
33 tion business is necessary, because funding otherwise available for the
34 film production business is not available on commercially reasonable
35 terms;

36 (c) the film production business has the reasonable potential to create
37 measurable employment within the state;

38 (d) the film production business has an innovative and proprietary
39 technology, product and service;

40 (e) the existing owners of the film production business and other
41 founders have made or are committed to make a substantial financial and
42 time commitment to the film production business;

43 (f) the securities to be issued and purchased are qualified securities;

1 and

2 (g) binding commitments have been made by the film production
3 business to the corporation for adequate reporting of financial data, in-
4 cluding a requirement for an annual report, or, if required by the board
5 of directors of the corporation, an annual audit of the financial and op-
6 erational records of the film production business, the right of access to
7 the financial records of the film production business and the right of the
8 corporation to record and publish normal and customary data and infor-
9 mation related to the issuance of tax credits that are not otherwise de-
10 termined to be trade or film production business secrets.

11 Sec. 7. (a) Before a film production investor may be entitled to re-
12 ceive tax credits, as authorized by this act, such investor must have made
13 a cash investment in a qualified security of a qualified Kansas film pro-
14 duction business. This film production business must have been approved
15 by the corporation as a qualified Kansas film production business prior
16 to the date on which the cash investment was made. To be designated as
17 a qualified Kansas film production business, a film production business
18 must make application to the corporation in accordance with the provi-
19 sions of this section.

20 (b) Such application to the corporation shall be in form and substance
21 as required by the corporation, but shall include at least the following:

22 (1) The name of the film production business and certified copies of
23 the organizational documents of the film production business;

24 (2) a film production business plan, including a description of the
25 film production business and the management, product, market and fi-
26 nancial plan of the film production business;

27 (3) a statement of the film production business innovative and prop-
28 rietary technology, product or service;

29 (4) a statement of the potential economic impact of the enterprise,
30 including the number, location and types of jobs expected to be created;

31 (5) a description of the qualified securities to be issued, the consid-
32 eration to be paid for the qualified securities, the amount of any tax credits
33 requested and the earliest year in which the tax credits may be redeemed;

34 (6) a statement of the amount, timing and projected use of the pro-
35 ceeds to be raised from the proposed sale of qualified securities; and

36 (7) such other information as the corporation may request, such as
37 the names, addresses and taxpayer identification numbers of all investors
38 who may qualify for the tax credit. Such list of investors who may qualify
39 for the tax credits shall be amended as new qualified securities are sold
40 or as any information on the list shall change.

41 (c) No film production business shall be designated as a qualified
42 Kansas film production business unless such film production business
43 meets all of the following criteria:

- 1 (1) The film production business must not have had annual gross
2 revenues of more than \$5,000,000 in the most recent tax year of the film
3 production business;
- 4 (2) the film production business must have been in operation for less
5 than five years;
- 6 (3) the film production business must not be engaged primarily in
7 any one or more of the following enterprises: (A) Any service provider
8 set forth in K.S.A. 17-2707, and amendments thereto; (B) the film pro-
9 duction business of banking, savings and loan or lending institutions,
10 credit or finance, or financial brokerage or investments; (C) the provision
11 of professional services, such as legal, accounting or engineering services;
12 (D) governmental, charitable, religious or trade organizations; (E) the
13 ownership, development, brokerage, sales or leasing of real estate; (F)
14 insurance; (G) construction or construction management or contracting;
15 (H) film production business consulting or brokerage; (I) any film pro-
16 duction business engaged primarily as a passive film production business,
17 having irregular or noncontinuous operations, or deriving substantially all
18 of the income of the film production business from passive investments
19 that generate interest, dividends, royalties, or capital gains, or any film
20 production business arrangements the effect of which is to immunize an
21 investor from risk of loss; (J) any Kansas certified capital formation com-
22 pany; and (K) any activity that is in violation of the law.
- 23 (4) The film production business must satisfy all other requirements
24 of this act.
- 25 (d) Notwithstanding the requirements of subsection (c), a film pro-
26 duction business may be considered as a qualified Kansas film production
27 business under the provisions of this act if such film production business
28 falls within a standard industrial classification code.
- 29 (e) The portions of documents and other materials submitted to the
30 corporation that contain trade secrets shall be kept confidential and shall
31 be maintained in a secured environment by the president of the corpo-
32 ration. For the purposes of this act, such portions of documents and other
33 materials means any customer lists, any formula, compound, production
34 data or compilation of information certain individuals within a commercial
35 concern using such portions of documents and other material means to
36 fabricate, produce or compound an article of trade, or, any service having
37 commercial value, which gives the user an opportunity to obtain a film
38 production business advantage over competitors who do not know or use
39 such service.
- 40 (f) A qualified Kansas film production business shall have the burden
41 of proof to demonstrate to the corporation the qualifications of the film
42 production business under this section and shall have the obligation to
43 notify the corporation in a timely manner of any changes in the qualifi-

1 cations of the film production business or in the eligibility of investors to
2 claim a tax credit for cash investment in a qualified security.
3 Sec. 8. This act shall take effect and be in force from and after its
4 publication in the statute book.