

HOUSE BILL No. 2564

By Joint Committee on Economic Development

1-4

9 AN ACT creating the Kansas film production investor tax credit act.

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

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

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

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

28 Sec. 2. As used in this act:

29 (a) "Film production investor" and "investor" mean an accredited
30 individual investor of high net worth, as defined in 17 C.F.R. 230.501(a)
31 as in effect on the effective date of this act, who seeks high returns
32 through private investments in start-up companies and may seek active
33 involvement in film production business. For the purposes of this act, a
34 person who serves as an executive officer, employee, vendor or inde-
35 pendent contractor of the business in which an otherwise qualified cash
36 investment is made is not a Kansas film production investor and such
37 person shall not qualify for the issuance of tax credits for such investment;

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

40 (c) "Kansas film production business" means any film production
41 business owned by an individual, any partnership, association or corpo-
42 ration domiciled in Kansas, or any corporation, even if a wholly owned
43 subsidiary of a foreign corporation, that does film production business

1 primarily in Kansas or does substantially all of such film production busi-
2 nesses' production in Kansas;

3 (d) "qualified Kansas film production business" means the Kansas
4 film production businesses that are approved and certified annually as
5 qualified Kansas film production businesses by the department of com-
6 merce at the sole discretion of the secretary;

7 (e) "qualified securities" means a cash investment through any one
8 or more forms of financial assistance as provided in this subsection that
9 have been approved in form and substance by the Kansas department of
10 commerce. Such forms of financial assistance are:

11 (1) Any form of equity, such as: (A) A general or limited, partnership
12 interest;

13 (B) common stock;

14 (C) preferred stock, with or without voting rights, without regard to
15 seniority position, and whether or not convertible into common stock; or

16 (D) any form of subordinate or convertible debt, or both, with war-
17 rants or other means of equity conversion attached; or

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

23 (f) "Secretary" means the secretary of the department of commerce.

24 Sec. 3. (a) A credit against the individual income tax imposed by ar-
25 ticle 32 of chapter 79 of the Kansas Statutes Annotated, and amendments
26 thereto, on the Kansas taxable income of a film production investor, shall
27 be allowed for a cash investment in the qualified securities of a qualified
28 Kansas film production business. The credit shall be in a total amount
29 equal to 50% of such investors' cash investment in any qualified Kansas
30 film production business, subject to the limitations set forth in subsection
31 (b). This tax credit may be used in its entirety in the taxable year in which
32 the cash investment is made except that no tax credit shall be allowed in
33 a tax year beginning prior to January 1, 2006. If the amount by which that
34 portion of the credit allowed by this section exceeds the investors' liability
35 in any one taxable year, beginning in the year 2006, the remaining portion
36 of the credit may be carried forward until the total amount of the credit
37 is used.

38 (b) The secretary of revenue shall not allow tax credits that are at-
39 tributable to an individual investor of more than \$50,000 of cash invest-
40 ments in the qualified securities of a single Kansas film production busi-
41 ness or for cash investments in the qualified securities of more than five
42 Kansas film production businesses each year. No tax credits authorized
43 by this act shall be allowed for any cash investments in qualified securities

1 for any year after the year 2011. The total amount of tax credits which
2 may be allowed under this section shall not exceed \$1,000,000 per tax
3 year.

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

8 Sec. 4. (a) Before a film production investor may be entitled to re-
9 ceive tax credits, as authorized by this act, such investor must have made
10 a cash investment in a qualified security of a qualified Kansas film pro-
11 duction business. This film production business must have been approved
12 by the department of commerce as a qualified Kansas film production
13 business prior to the date on which the cash investment was made.

14 (b) No film production business shall be designated as a qualified
15 Kansas film production business unless such film production business
16 meets all of the following criteria:

17 (1) The film production business must not have had annual gross
18 revenues of more than \$5,000,000 in the most recent tax year of the film
19 production business;

20 (2) the film production business must have been in operation for less
21 than five years; and

22 (3) the film production business must satisfy all other requirements
23 of this act.

24 Sec. 5. The state of Kansas shall not be held liable for any damages
25 to any investor that makes an investment in any qualified security of a
26 qualified Kansas film production business.

27 Sec. 6. The designation of a film production business as a qualified
28 Kansas film production business shall be made at the sole discretion of
29 the secretary. Tax credits for qualified Kansas film production businesses
30 are a limited resource of the state. The purpose of such tax credits is to
31 facilitate the availability of equity investment in film production busi-
32 nesses in the early stages of commercial development and to assist in the
33 creation and expansion of Kansas film businesses which are job and wealth
34 creating enterprises. To achieve this purpose the secretary is given the
35 sole discretion to award these limited tax credits to qualified investors in
36 qualified businesses which are most likely to provide the greatest eco-
37 nomic benefit to the state. The secretary may consider numerous factors,
38 including, but not limited to, whether: (a) The film production business
39 has a reasonable chance of success;

40 (b) funding is not available on commercially reasonable terms;

41 (c) the business has the reasonable potential to create measurable
42 employment within the state;

43 (d) the existing owners of the film production business and other

1 founders have made or are committed to make a substantial financial or
2 time commitment to the film production business; and
3 (e) the securities to be issued and purchased are qualified securities.
4 In addition the secretary may require: (1) Reporting of financial data,
5 including an annual report or an annual audit of the financial and oper-
6 ational records of the film production business;
7 (2) the right to review or reject scripts or proposed film projects not
8 suitable for public financing; or
9 (3) the right to report and make public submitted data and infor-
10 mation related to the issuance of tax credits that are not otherwise de-
11 termined to be trade or film production business secrets.

12 Sec. 7. (a) Each qualified Kansas film production business for which
13 tax credits have been issued pursuant to this act shall report to the sec-
14 retary on an annual basis: (1) The name, address and taxpayer identifi-
15 cation number of each film production investor who has made cash in-
16 vestment in the qualified securities of a qualified Kansas film production
17 business and has received tax credits for this investment during the pre-
18 ceding year and all other preceding years;
19 (2) the amounts of these cash investments by each film production
20 investor and a description of the qualified securities issued in consider-
21 ation of such cash investments; and
22 (3) any additional information as the secretary may require pursuant to
23 this act.

24 (b) The secretary shall transmit annually to the governor, Kansas,
25 Inc., the standing committee on commerce of the senate, the standing
26 committee on economic development of the house of representatives and
27 the joint committee on economic development, a report, based upon in-
28 formation received from each qualified Kansas film production business
29 for which tax credits have been issued during the preceding year, describ-
30 ing the following: (1) The manner in which the purpose, as described in
31 this act, has been carried out;
32 (2) the total cash investments made for the purchase of qualified se-
33 curities of qualified Kansas film production businesses during the pre-
34 ceding year and cumulatively since the inception of this act;
35 (3) an estimate of jobs created and jobs preserved by cash invest-
36 ments made in qualified securities of qualified Kansas film production
37 businesses; and
38 (4) an estimate of the multiplier effect on the Kansas economy of the
39 cash investments made pursuant to this act.

40 (c) The secretary shall provide the information specified in subsection
41 (a) to the department of revenue on an annual basis. The secretary shall
42 conduct an annual review of the activities undertaken pursuant to this act
43 to ensure that tax credits issued pursuant to this act are issued in com-

1 pliance with the provisions of this act or rules and regulations promul-
2 gated by the department with respect to this act.

3 (d) Any violation of the reporting requirements set forth in this sec-
4 tion shall be grounds for loss of designation as a qualified Kansas film
5 production business under this section.

6 (e) If the secretary determines that a film production business is not
7 in substantial compliance with the requirements of this act, the secretary,
8 by written notice, shall inform the officers of the qualified Kansas film
9 production business and the film production business that such film pro-
10 duction business will lose designation as a qualified Kansas film produc-
11 tion business unless such film production business corrects the deficien-
12 cies and is once again in compliance with the requirements for
13 designation.

14 (f) Loss of designation of a qualified Kansas film production business
15 shall preclude the issuance of any additional tax credits with respect to
16 any investment made in such film production business and the secretary
17 shall not approve the application of such film production business as a
18 qualified Kansas film production business. Upon loss of the designation
19 as a qualified Kansas film production business or if a film production
20 business loses its designation as a qualified Kansas film production busi-
21 ness under this act by moving its operation outside Kansas within 10 years
22 after receiving financial assistance under this act, such film production
23 business shall repay to the secretary all tax credits claimed and allowed
24 for investments in such business. Each qualified Kansas film production
25 business that loses such designation shall enter into a repayment agree-
26 ment with the secretary specifying the terms of such repayment
27 obligation.

28 (g) Film production investors in a qualified Kansas film production
29 business shall not be required to repay any credits claimed and allowed
30 pursuant to the provisions of this act.

31 Sec. 8. This act shall take effect and be in force from and after its
32 publication in the statute book.