

REFERENCE TITLE: restructuring motion picture production incentives

State of Arizona
Senate
Forty-eighth Legislature
First Regular Session
2007

SB 1260

Introduced by
Senator Blendu

AN ACT

AMENDING SECTIONS 41-1517, 42-5009, 43-1075 AND 43-1163, ARIZONA REVISED STATUTES; RELATING TO MOTION PICTURE PRODUCTION TAXATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 41-1517, Arizona Revised Statutes, is amended to
3 read:

4 41-1517. Motion picture production tax incentives; duties;
5 definitions

6 A. From and after December 31, 2005 ~~through December 31, 2010~~, the
7 department of commerce shall qualify motion picture production companies that
8 produce one or more motion pictures in this state for motion picture
9 production tax incentives, subject to the following requirements and
10 conditions:

11 1. A motion picture production company must incur production costs in
12 this state of at least ~~two hundred fifty thousand~~ ONE MILLION dollars ~~in~~
13 ~~producing one or more motion pictures during each twelve month period for~~
14 ~~which it is qualified for the tax incentives~~ FOR EACH MOTION PICTURE.

15 ~~2. For the purpose of this section, production costs are limited to~~
16 ~~and subject to the following conditions:~~

17 ~~(a) Salaries and other compensation for talent, management and labor~~
18 ~~paid to residents of this state, as defined by section 43-104.~~

19 ~~(b) A story and scenario to be used for a motion picture.~~

20 ~~(c) Set construction and operations, wardrobe, props, accessories and~~
21 ~~related services in this state. Expenses paid for construction contracts are~~
22 ~~limited to contractors who are licensed under title 32, chapter 10.~~

23 ~~(d) Photography, sound synchronization, lighting and related costs~~
24 ~~incurred in this state.~~

25 ~~(e) Editing and related services performed in this state.~~

26 ~~(f) Rental of facilities and equipment in this state.~~

27 ~~(g) Catered food, drink and condiment purchased in this state.~~

28 ~~(h) Other direct in state costs of producing the motion picture,~~
29 ~~pursuant to rules adopted by the department of revenue that follow generally~~
30 ~~accepted accounting standards for the motion picture industry.~~

31 ~~(i) Payments for penalties and fines do not qualify as production~~
32 ~~costs.~~

33 ~~3.~~ 2. A motion picture production company or its authorized payroll
34 service company must employ residents of this state in its production
35 activities as follows:

36 (a) In 2006, at least twenty-five per cent of full-time employees
37 working in this state must be residents of this state.

38 (b) In 2007, at least thirty-five per cent of full-time employees
39 working in this state must be residents of this state.

40 (c) In 2008 and every subsequent taxable year, at least fifty per cent
41 of full-time employees working in this state must be residents of this state.

42 ~~4.~~ 3. A motion picture production company must submit a completed
43 application pursuant to subsection B or I of this section. An application is
44 complete on receipt of all requested information.

1 ~~5-~~ 4. A motion picture production company must include in the credits
2 for each motion picture, other than a commercial advertisement, an
3 acknowledgement that the production was filmed in ~~this state~~ ARIZONA.

4 B. A motion picture production company initially applying for
5 qualification under this section must report the following to the department
6 of commerce on a form and in a manner prescribed by the department, with the
7 cooperation of the department of revenue:

8 1. The name, address, telephone number and web site of the motion
9 picture production company.

10 2. The name and address of an individual who will maintain records of
11 expenditures in this state.

12 3. The projected first preproduction date and last production date in
13 this state.

14 4. The production office address and office telephone number in this
15 state.

16 5. The estimated total budget of the production.

17 6. The estimated total expenditures in this state.

18 7. The estimated total percentage of the production taking place in
19 this state.

20 8. The estimated level of employment of residents of this state in the
21 cast and crew.

22 9. A script, including a synopsis, the proposed director and a
23 preliminary list of the cast and producer.

24 10. A signed affirmation from the applicant that:

25 (a) The motion picture production company agrees to furnish records of
26 expenditures in this state to the department of revenue on request.

27 (b) Any items purchased with a ~~certification~~ CERTIFICATE issued under
28 section 42-5009, subsection H are intended for use by the applicant directly
29 in motion picture production.

30 C. The department of commerce shall review all applications within
31 thirty days after submission pursuant to subsection B or I of this section to
32 determine whether the motion picture production company satisfies all of the
33 criteria provided in subsection A of this section and shall establish the
34 process by which the department qualifies and preapproves a company for
35 motion picture production tax incentives. This process shall preapprove a
36 company for motion picture production tax incentives based on priority
37 placement established by the date that such motion picture production company
38 filed its initial application for qualification with the department.

39 D. If a company fails to begin production within four months after the
40 department preapproves the company or fails to provide notice pursuant to
41 this subsection, the preapproval lapses, the application is void and the
42 amount of the preapproved incentives does not apply ~~to~~ AGAINST the dollar
43 limit prescribed by subsection E of this section for that year. The
44 department of commerce may conduct a site visit to verify that production has
45 begun. Within four months after the department preapproves the company's

1 initial application, the company must submit notice to the department of
2 commerce that production has begun and provide at least one of the following:

3 1. A copy of a contract, loan out agreement or deal memo with a
4 cameraman and crew.

5 2. A copy of the crew call sheet for the first day of production.

6 3. Evidence that residents of this state have been paid a total of at
7 least five thousand dollars for work on the preapproved motion picture.

8 4. A copy of a contract or agreement directly attributable to the
9 preapproved motion picture.

10 E. The department shall not preapprove income tax credits exceeding a
11 total of:

12 1. Thirty million dollars in 2006.

13 2. Forty million dollars in 2007.

14 3. Fifty million dollars in 2008.

15 ~~4. Sixty million dollars in 2009.~~

16 ~~5.~~ 4. From and after December 31, ~~2009~~ 2008, ~~seventy~~ ONE HUNDRED
17 million dollars in a single year.

18 ~~6. Five million dollars for an individual motion picture application.~~

19 5. FOR EACH INDIVIDUAL MOTION PICTURE APPLICATION:

20 (a) FIVE MILLION DOLLARS THROUGH DECEMBER 31, 2007.

21 (b) TEN MILLION DOLLARS IN 2008.

22 (c) TWENTY MILLION DOLLARS FROM AND AFTER DECEMBER 31, 2008.

23 F. IF THE FULL AMOUNT OF THE ANNUAL INCOME TAX CREDIT LIMIT UNDER
24 SUBSECTION E OF THIS SECTION IS NOT PREAPPROVED AND ALLOCATED, THE UNUSED
25 AMOUNT DOES NOT LAPSE BUT SHALL BE CARRIED FORWARD AND ADDED TO THE LIMIT FOR
26 THE FOLLOWING YEAR. After October 31 of each year, if the department has
27 preapproved the maximum calendar year tax credit amount pursuant to
28 subsection E of this section, the department may accept initial applications
29 for the next calendar year. The preapproval of any application pursuant to
30 this subsection shall not be effective prior to the first business day of the
31 following calendar year.

32 G. The department of commerce shall deny an application submitted
33 pursuant to subsection B or I of this section if it determines that:

34 1. The motion picture production company does not meet all of the
35 established criteria provided in subsection A of this section.

36 2. The production would constitute an obscene motion picture film or
37 obscene pictorial publication under title 12, chapter 7, article 1.1.

38 3. The production depicts sexual activity as defined in title 13,
39 chapter 35.

40 4. The production would constitute sexual exploitation of a minor or
41 commercial sexual exploitation of a minor under title 13, chapter 35.1.

42 H. On a determination by the department of commerce that a motion
43 picture production company qualifies for motion picture production tax
44 incentives, the department shall issue the company a written letter of
45 qualification and transmit a copy of the letter to the department of revenue.

1 ~~A letter of qualification is effective for twelve consecutive months as~~
2 ~~stated in the letter.~~

3 I. A motion picture production company that applies for
4 requalification must continue to meet all of the eligibility criteria
5 provided under subsection A of this section and must provide the department
6 of commerce with updated information on the location, ownership and
7 operations of the business. For purposes of efficiency and reducing
8 duplicative or redundant reporting duties, the department may establish a
9 streamlined process for requalification.

10 J. Upon completion of the motion picture production, a motion picture
11 production company that qualifies for the motion picture tax incentives shall
12 certify to the department the total amount of eligible production costs
13 associated with the project incurred from and after December 31, 2005. From
14 and after June 30, 2006, the department shall provide approval to a motion
15 picture production company that it has met the eligibility requirements of
16 this section and shall notify the department of revenue that a motion picture
17 production company may claim the tax credits pursuant to sections 43-1075 and
18 43-1163. If the eligible production costs actually incurred are less than
19 the amount preapproved for income tax credits, the preapproved amount not
20 incurred lapses and does not apply ~~to~~ AGAINST the dollar limit prescribed by
21 subsection E of this section for that year.

22 K. The department of commerce, with the cooperation of the department
23 of revenue, shall adopt rules and publish and prescribe forms and procedures
24 as necessary to effectuate the purposes of this section.

25 ~~L. Any information gathered from motion picture production companies~~
26 ~~for the purposes of this section shall be considered confidential taxpayer~~
27 ~~information and shall be disclosed only as provided in section 42-2003,~~
28 ~~subsection B, paragraph 12.~~

29 L. INFORMATION SUBMITTED BY MOTION PICTURE PRODUCTION COMPANIES TO THE
30 DEPARTMENT OF COMMERCE UNDER THIS SECTION IS PUBLIC INFORMATION AND SUBJECT
31 TO DISCLOSURE PURSUANT TO TITLE 39, CHAPTER 1, ARTICLE 2. TAXPAYER
32 INFORMATION SUBMITTED BY THE DEPARTMENT OF REVENUE TO THE DEPARTMENT OF
33 COMMERCE IS CONFIDENTIAL AND MAY BE DISCLOSED ONLY AS PROVIDED BY TITLE 42,
34 CHAPTER 2, ARTICLE 1.

35 M. The department of commerce shall:

36 1. Keep annual records of the information provided on applications for
37 motion picture production tax incentives. These records shall reflect a
38 percentage comparison of the annual amount of monies exempted or credited to
39 qualifying motion picture production companies to the estimated amount of
40 monies spent on in-state production costs by motion picture production
41 companies.

42 2. Maintain annual data on growth in Arizona-based motion picture
43 industry companies and motion picture industry employment and wages.

44 3. Not later than December 1 of each year, prepare and publish a
45 report summarizing the information collected pursuant to this subsection.

1 The department shall make copies of the annual report available to the public
2 on request.

3 N. For the purposes of this section:

4 1. "Motion picture" means a single medium or multimedia program,
5 including a commercial advertising message, that:

6 (a) Is created by production activities conducted in whole or in part
7 in this state.

8 (b) Can be viewed or reproduced.

9 (c) Is intended for commercial distribution or licensing in the
10 delivery medium used.

11 2. "Motion picture production company" means any person **THAT IS**
12 primarily engaged in the business of producing motion pictures and that has a
13 physical business office and bank account in this state.

14 3. "Motion picture production tax incentives" means the tax deductions
15 for transaction privilege and use taxes listed in section 42-5009, subsection
16 H and the credit against income taxes provided under section 43-1075 or
17 43-1163.

18 Sec. 2. Section 42-5009, Arizona Revised Statutes, is amended to read:
19 **42-5009. Certificates establishing deductions; liability for**
20 **making false certificate**

21 A. A person who conducts any business classified under article 2 of
22 this chapter may establish entitlement to the allowable deductions from the
23 tax base of that business by both:

24 1. Marking the invoice for the transaction to indicate that the gross
25 proceeds of sales or gross income derived from the transaction was deducted
26 from the tax base.

27 2. Obtaining a certificate executed by the purchaser indicating the
28 name and address of the purchaser, the precise nature of the business of the
29 purchaser, the purpose for which the purchase was made, the necessary facts
30 to establish the appropriate deduction and the tax license number of the
31 purchaser to the extent the deduction depends on the purchaser conducting
32 business classified under article 2 of this chapter and a certification that
33 the person executing the certificate is authorized to do so on behalf of the
34 purchaser. The certificate may be disregarded if the seller has reason to
35 believe that the information contained in the certificate is not accurate or
36 complete.

37 B. A person who does not comply with subsection A of this section may
38 establish entitlement to the deduction by presenting facts necessary to
39 support the entitlement, but the burden of proof is on that person.

40 C. The department may prescribe a form for the certificate described
41 in subsection A of this section. Under such rules as it may prescribe, the
42 department may also describe transactions with respect to which a person is
43 not entitled to rely solely on the information contained in the certificate
44 provided for in subsection A of this section but must instead obtain such

1 additional information as required by the rules in order to be entitled to
2 the deduction.

3 D. If a seller is entitled to a deduction by complying with subsection
4 A of this section, the department may require the purchaser which caused the
5 execution of the certificate to establish the accuracy and completeness of
6 the information required to be contained in the certificate which would
7 entitle the seller to the deduction. If the purchaser cannot establish the
8 accuracy and completeness of the information, the purchaser is liable in an
9 amount equal to any tax, penalty and interest which the seller would have
10 been required to pay under this article if the seller had not complied with
11 subsection A of this section. Payment of the amount under this subsection
12 exempts the purchaser from liability for any tax imposed under article 4 of
13 this chapter. The amount shall be treated as a transaction privilege tax to
14 the purchaser and as tax revenues collected from the seller in order to
15 designate the distribution base for purposes of section 42-5029.

16 E. If a seller is entitled to a deduction by complying with subsection
17 B of this section, the department may require the purchaser to establish the
18 accuracy and completeness of the information provided to the seller that
19 entitled the seller to the deduction. If the purchaser cannot establish the
20 accuracy and completeness of the information, the purchaser is liable in an
21 amount equal to any tax, penalty and interest that the seller would have been
22 required to pay under this article if the seller had not complied with
23 subsection B of this section. Payment of the amount under this subsection
24 exempts the purchaser from liability for any tax imposed under article 4 of
25 this chapter. The amount shall be treated as a transaction privilege tax to
26 the purchaser and as tax revenues collected from the seller in order to
27 designate the distribution base for purposes of section 42-5029.

28 F. The department may prescribe a form for a certificate used to
29 establish entitlement to the deductions described in section 42-5061,
30 subsection A, paragraph 47 and section 42-5063, subsection B, paragraph 3.
31 Under rules the department may prescribe, the department may also require
32 additional information for the seller to be entitled to the deduction. If a
33 seller is entitled to the deductions described in section 42-5061, subsection
34 A, paragraph 47 and section 42-5063, subsection B, paragraph 3, the
35 department may require the purchaser who executed the certificate to
36 establish the accuracy and completeness of the information contained in the
37 certificate that would entitle the seller to the deduction. If the purchaser
38 cannot establish the accuracy and completeness of the information, the
39 purchaser is liable in an amount equal to any tax, penalty and interest that
40 the seller would have been required to pay under this article. Payment of
41 the amount under this subsection exempts the purchaser from liability for any
42 tax imposed under article 4 of this chapter. The amount shall be treated as
43 a transaction privilege tax to the purchaser and as tax revenues collected
44 from the seller in order to designate the distribution base for purposes of
45 section 42-5029.

1 G. If a seller claims a deduction under section 42-5061, subsection A,
2 paragraph 25 and establishes entitlement to the deduction with an exemption
3 letter that the purchaser received from the department and the exemption
4 letter was based on a contingent event, the department may require the
5 purchaser that received the exemption letter to establish the satisfaction of
6 the contingent event within a reasonable time. If the purchaser cannot
7 establish the satisfaction of the event, the purchaser is liable in an amount
8 equal to any tax, penalty and interest that the seller would have been
9 required to pay under this article if the seller had not been furnished the
10 exemption letter. Payment of the amount under this subsection exempts the
11 purchaser from liability for any tax imposed under article 4 of this chapter.
12 The amount shall be treated as a transaction privilege tax to the purchaser
13 and as tax revenues collected from the seller in order to designate the
14 distribution base for purposes of section 42-5029. For the purposes of this
15 subsection, "reasonable time" means a time limitation that the department
16 determines and that does not exceed the time limitations pursuant to section
17 42-1104.

18 H. From and after December 31, 2005 through December 31, 2010, the
19 department shall prescribe a form for a certificate used to establish
20 entitlement to the deductions described in section 42-5061, subsection B,
21 paragraph 23, SECTION 42-5066, SUBSECTION B, PARAGRAPH 4, section 42-5070,
22 subsection C, paragraph 2, section 42-5074, subsection B, paragraph 10,
23 section 42-5075, subsection B, paragraph 20 and section 42-5159, subsection
24 B, paragraph 23 relating to motion picture production. The certificate is
25 effective ~~for twelve consecutive calendar months from and after the date of~~
26 ~~issuance~~ UNTIL COMPLETION OF THE MOTION PICTURE PRODUCTION and is subject to
27 the following requirements and conditions:

28 1. A motion picture production company as defined in section 41-1517
29 may use a certificate issued pursuant to this subsection only with respect to
30 production costs ~~described in section 41-1517, subsection A, paragraph 2~~ that
31 are subject to taxation under article 2 or 4 of this chapter.

32 2. The department shall issue the certificate to a motion picture
33 production company on receiving the company's letter of qualification from
34 the department of commerce, except as otherwise provided in this subsection.

35 3. The department shall not issue a certificate to a motion picture
36 production company that has a delinquent tax balance owing to the department
37 under this title or title 43.

38 4. If the department determines that a motion picture production
39 company no longer qualifies for a certificate ~~of exemption~~ or has used the
40 certificate ~~of exemption~~ for unauthorized purposes, the department shall
41 revoke the certificate ~~of exemption~~ and the motion picture production company
42 is liable for an amount equal to the transaction privilege and use taxes that
43 would have been due on taxable transactions during the time the company did
44 not qualify for or improperly used the certificate, with interest and
45 penalties as provided by law.

1 5. The department shall maintain annual data on the total amount of
2 monies exempted through the use of certificates issued pursuant to this
3 subsection and shall provide those data to the department of commerce on
4 request.

5 6. The department of revenue, with the cooperation of the department
6 of commerce, shall adopt rules and publish and prescribe forms and procedures
7 as necessary to effectuate the purposes of this subsection.

8 7. If, after audit, the department determines that a motion picture
9 production company failed to meet any of the requirements prescribed by this
10 subsection, any deductions from taxation from the use of the certificate are
11 subject to recapture and payment by the motion picture production company to
12 the department.

13 Sec. 3. Section 43-1075, Arizona Revised Statutes, is amended to read:
14 43-1075. Credit for motion picture production costs;
15 definitions

16 A. Beginning from and after December 31, 2005 ~~through December 31,~~
17 ~~2010~~, a credit is allowed against the taxes imposed by this title for motion
18 picture production costs paid by a motion picture production company in this
19 state that are directly attributable to the production of one or more motion
20 pictures in this state **AS DETERMINED BY THE DEPARTMENT OF COMMERCE PURSUANT**
21 **TO SECTION 41-1517**. The amount of the credit is equal to ~~a percentage~~ **THIRTY**
22 **PER CENT** of the amount of motion picture production costs paid in this state.
23 **THE TAXPAYER MAY ELECT TO CLAIM PART OF THE CREDIT IN EACH TAXABLE YEAR IN**
24 **WHICH PRODUCTION COSTS WERE INCURRED OR THE ENTIRE AMOUNT OF THE CREDIT IN**
25 **THE TAXABLE YEAR IN WHICH PRODUCTION WAS COMPLETED AS DETERMINED BY THE**
26 **DEPARTMENT OF COMMERCE PURSUANT TO SECTION 41-1517, SUBSECTION J. as follows:**

Production costs	Percentage credit
\$250,000 — \$1,000,000	10%
\$1,000,001 — \$3,000,000	15%
More than \$3,000,000	20%

31 B. The department shall not allow in any year tax credits that exceed
32 the aggregate amount prescribed in section 41-1517.

33 C. The department shall not allow a credit under this section to a
34 taxpayer who has a delinquent tax balance owing to the department under this
35 title or title 42.

36 D. To qualify for a credit under this section, the motion picture
37 production company must:

- 38 1. Employ residents of this state in production as follows:
 - 39 (a) In 2006, twenty-five per cent of full-time employees working in
 - 40 this state must be residents of this state.
 - 41 (b) In 2007, thirty-five per cent of full-time employees working in
 - 42 this state must be residents of this state.
 - 43 (c) In 2008 and every subsequent taxable year, fifty per cent of
 - 44 full-time employees working in this state must be residents of this state.

1 2. Include in the production credits for each commercial motion
2 picture, other than a commercial advertisement, an acknowledgement that the
3 production was filmed in Arizona.

4 3. Receive preapproval and postapproval from the department of
5 commerce pursuant to section 41-1517.

6 E. BEFORE CLAIMING A CREDIT UNDER THIS SECTION, A TAXPAYER MUST SUBMIT
7 TO AN AUDIT OF ITS PRODUCTION COSTS AND OTHER OPERATIONAL REQUIREMENTS
8 PRESCRIBED BY SECTION 41-1517 AND THIS SECTION BY AN INDEPENDENT CERTIFIED
9 PUBLIC ACCOUNTANT IN THIS STATE TO CONFIRM ITS QUALIFICATION FOR THE CREDIT.
10 THE COST OF THE AUDIT IS THE TAXPAYER'S RESPONSIBILITY. THE TAXPAYER MUST
11 TRANSMIT CERTIFIED COPIES OF THE FINDINGS AND CONCLUSIONS OF THE AUDIT TO THE
12 DEPARTMENT OF COMMERCE AND THE DEPARTMENT OF REVENUE. REGARDLESS OF THE
13 FINDINGS OF THE AUDIT, THE DEPARTMENT HAS THE FINAL AUTHORITY FOR APPROVING
14 OR DENYING THE CREDIT.

15 ~~E.~~ F. Co-owners of a motion picture production company, including
16 partners in a partnership, members of a limited liability company and
17 shareholders of an S corporation as defined in section 1361 of the internal
18 revenue code, may allocate the credit allowed under this section among the
19 co-owners on any basis without regard to their proportional ownership
20 interest. The total of the credits allowed all such owners of the motion
21 picture production company may not exceed the amount that would have been
22 allowed for a sole owner of the company.

23 ~~F.~~ G. If the allowable tax credit for a taxpayer exceeds the taxes
24 otherwise due under this title on the claimant's income, or if there are no
25 taxes due under this title, ~~the taxpayer may carry the amount of the claim~~
26 ~~not used to offset the taxes under this title forward for not more than five~~
27 ~~consecutive taxable years' income tax liability~~ THE DEPARTMENT SHALL PAY THE
28 AMOUNT NOT USED AS AN OFFSET AGAINST TAXES TO THE TAXPAYER IN THE SAME MANNER
29 AS A REFUND GRANTED UNDER SECTION 42-1118.

30 ~~G.~~ All or part of any unclaimed amount of credit under this section
31 may be sold or otherwise transferred under the following conditions:

32 ~~1.~~ A single sale or transfer may involve one or more transferees, and
33 a transferee may in turn resell or transfer the credit subject to the same
34 conditions of this subsection.

35 ~~2.~~ Both the transferor and transferee must submit a written notice of
36 the transfer to the department within thirty days after the sale or transfer.
37 The transferee's notice shall include a processing fee equal to one per cent
38 of the transferee's tax credit balance or two hundred dollars, whichever is
39 less. The notice shall include:

40 ~~(a)~~ The name of the motion picture production company.

41 ~~(b)~~ The date of the transfer.

42 ~~(c)~~ The amount of the transfer.

43 ~~(d)~~ The transferor's tax credit balance before the transfer and the
44 remaining balance after the transfer.

45 ~~(e)~~ All tax identification numbers for both transferor and transferee.

1 ~~(f) Any other information required by rule.~~

2 ~~3. A sale or transfer of the credit does not extend the time in which~~
3 ~~the credit can be used. The carryforward period of time under subsection F~~
4 ~~of this section for a credit that is sold or transferred begins on the date~~
5 ~~the credit was originally earned.~~

6 ~~4. If a transferor was not qualified or was disqualified from using~~
7 ~~the credit at the time of the transfer, the department shall either disallow~~
8 ~~the credit claimed by a transferee or recapture the credit from the~~
9 ~~transferee through any authorized collection method. The transferee's~~
10 ~~recourse is against the transferor.~~

11 ~~5. In the case of any failure to comply with this subsection, the~~
12 ~~department shall disallow the tax credit until the taxpayer is in full~~
13 ~~compliance.~~

14 H. The department shall maintain annual data on the total amount of
15 monies credited pursuant to this section, and shall provide those data to the
16 department of commerce on request.

17 I. The department, with the cooperation of the department of commerce,
18 shall adopt rules and publish and prescribe forms and procedures as necessary
19 to effectuate the purposes of this section.

20 J. The credit allowed by this section is in lieu of any allowance for
21 state tax purposes of a deduction of those expenses allowed by the internal
22 revenue code.

23 K. For the purposes of this section, "motion picture" and "motion
24 picture production company" have the same meanings prescribed in section
25 41-1517.

26 Sec. 4. Section 43-1163, Arizona Revised Statutes, is amended to read:
27 43-1163. Credit for motion picture production costs:
28 definitions

29 A. Beginning from and after December 31, 2005 ~~through December 31,~~
30 ~~2010~~, a credit is allowed against the taxes imposed by this title for motion
31 picture production costs paid by a motion picture production company in this
32 state that are directly attributable to the production of one or more motion
33 pictures in this state AS DETERMINED BY THE DEPARTMENT OF COMMERCE PURSUANT
34 TO SECTION 41-1517. The amount of the credit is equal to ~~a percentage~~ THIRTY
35 PER CENT of the amount of motion picture production costs paid in this state.
36 THE TAXPAYER MAY ELECT TO CLAIM PART OF THE CREDIT IN EACH TAXABLE YEAR IN
37 WHICH PRODUCTION COSTS WERE INCURRED OR THE ENTIRE AMOUNT OF THE CREDIT IN
38 THE TAXABLE YEAR IN WHICH PRODUCTION WAS COMPLETED AS DETERMINED BY THE
39 DEPARTMENT OF COMMERCE PURSUANT TO SECTION 41-1517, SUBSECTION J. as follows:

Production costs	Percentage credit
\$250,000 - \$1,000,000	10%
\$1,000,001 - \$3,000,000	15%
More than \$3,000,000	20%

44 B. The department shall not allow in any year tax credits that exceed
45 the aggregate amount prescribed in section 41-1517.

1 C. The department shall not allow a credit under this section to a
2 taxpayer who has a delinquent tax balance owing to the department under this
3 title or title 42.

4 D. To qualify for a credit under this section, the motion picture
5 production company must:

6 1. Employ residents of this state in production as follows:

7 (a) In 2006, twenty-five per cent of full-time employees working in
8 this state must be residents of this state.

9 (b) In 2007, thirty-five per cent of full-time employees working in
10 this state must be residents of this state.

11 (c) In 2008 and every subsequent taxable year, fifty per cent of
12 full-time employees working in this state must be residents of this state.

13 2. Include in the production credits for each commercial motion
14 picture, other than a commercial advertisement, an acknowledgement that the
15 production was filmed in Arizona.

16 3. Receive preapproval and postapproval from the department of
17 commerce pursuant to section 41-1517.

18 E. BEFORE CLAIMING A CREDIT UNDER THIS SECTION, A TAXPAYER MUST SUBMIT
19 TO AN AUDIT OF ITS PRODUCTION COSTS AND OTHER OPERATIONAL REQUIREMENTS
20 PRESCRIBED BY SECTION 41-1517 AND THIS SECTION BY AN INDEPENDENT CERTIFIED
21 PUBLIC ACCOUNTANT IN THIS STATE TO CONFIRM ITS QUALIFICATION FOR THE CREDIT.
22 THE COST OF THE AUDIT IS THE TAXPAYER'S RESPONSIBILITY. THE TAXPAYER MUST
23 TRANSMIT CERTIFIED COPIES OF THE FINDINGS AND CONCLUSIONS OF THE AUDIT TO THE
24 DEPARTMENT OF COMMERCE AND THE DEPARTMENT OF REVENUE. REGARDLESS OF THE
25 FINDINGS OF THE AUDIT, THE DEPARTMENT HAS THE FINAL AUTHORITY FOR APPROVING
26 OR DENYING THE CREDIT.

27 ~~F.~~ F. Co-owners of a motion picture production company, including
28 corporate partners in a partnership and members of a limited liability
29 company, may allocate the credit allowed under this section among the
30 co-owners on any basis without regard to their proportional ownership
31 interest. The total of the credits allowed all such owners of the motion
32 picture production company may not exceed the amount that would have been
33 allowed for a sole owner of the company.

34 ~~F.~~ G. If the allowable tax credit for a taxpayer exceeds the taxes
35 otherwise due under this title on the claimant's income, or if there are no
36 taxes due under this title, ~~the taxpayer may carry the amount of the claim~~
37 ~~not used to offset the taxes under this title forward for not more than five~~
38 ~~consecutive taxable years' income tax liability~~ THE DEPARTMENT SHALL PAY THE
39 AMOUNT NOT USED AS AN OFFSET AGAINST TAXES TO THE TAXPAYER IN THE SAME MANNER
40 AS A REFUND GRANTED UNDER SECTION 42-1118.

41 ~~G.~~ ~~All or part of any unclaimed amount of credit under this section~~
42 ~~may be sold or otherwise transferred under the following conditions:~~

43 ~~1. A single sale or transfer may involve one or more transferees, and~~
44 ~~a transferee may in turn resell or transfer the credit subject to the same~~
45 ~~conditions of this subsection.~~

1 ~~2. Both the transferor and transferee must submit a written notice of~~
2 ~~the transfer to the department within thirty days after the sale or transfer.~~
3 ~~The transferee's notice shall include a processing fee equal to one per cent~~
4 ~~of the transferee's tax credit balance or two hundred dollars, whichever is~~
5 ~~less. The notice shall include:~~

6 ~~(a) The name of the motion picture production company.~~

7 ~~(b) The date of the transfer.~~

8 ~~(c) The amount of the transfer.~~

9 ~~(d) The transferor's tax credit balance before the transfer and the~~
10 ~~remaining balance after the transfer.~~

11 ~~(e) All tax identification numbers for both transferor and transferee.~~

12 ~~(f) Any other information required by rule.~~

13 ~~3. A sale or transfer of the credit does not extend the time in which~~
14 ~~the credit can be used. The carryforward period of time under subsection F~~
15 ~~of this section for a credit that is sold or transferred begins on the date~~
16 ~~the credit was originally earned.~~

17 ~~4. If a transferor was not qualified or was disqualified from using~~
18 ~~the credit at the time of the transfer, the department shall either disallow~~
19 ~~the credit claimed by a transferee or recapture the credit from the~~
20 ~~transferee through any authorized collection method. The transferee's~~
21 ~~recourse is against the transferor.~~

22 ~~5. In the case of any failure to comply with this subsection, the~~
23 ~~department shall disallow the tax credit until the taxpayer is in full~~
24 ~~compliance.~~

25 H. The department shall maintain annual data on the total amount of
26 monies credited pursuant to this section, and shall provide those data to the
27 department of commerce on request.

28 I. The department, with the cooperation of the department of commerce,
29 shall adopt rules and publish and prescribe forms and procedures as necessary
30 to effectuate the purposes of this section.

31 J. The credit allowed by this section is in lieu of any allowance for
32 state tax purposes of a deduction of those expenses allowed by the internal
33 revenue code.

34 K. For the purposes of this section, "motion picture" and "motion
35 picture production company" have the same meanings prescribed in section
36 41-1517.