

Live Theatrical Production Tax Credit

Program guidelines

This bill establishes a new tax credit for production companies of eligible pre- and post-Broadway productions performed at qualified facilities in Connecticut. The credit equals 30% of the production's eligible expenditures, including up to \$250,000 of payroll per week. Taxpayers may apply it against the personal income tax or specified business taxes.

EFFECTIVE DATE: January 1, 2024, and applicable to income and tax years starting on or after that date.

QUALIFIED PRODUCTIONS AND FACILITIES

Under the bill, to qualify for a credit, the production must be a for profit live stage presentation of a pre- or post-Broadway production (in its original or adapted version) performed at a qualified production facility (i.e., an "accredited theater production"). A "pre-Broadway production" is one scheduled to be presented in New York City's Broadway theater district within 12 months after its performance in Connecticut, while a "post-Broadway production" is one that opens its national tour in Connecticut after a Broadway run.

A "qualified production facility" is a facility located in Connecticut where live stage presentations are, or are intended to be, exclusively performed. It must have at least one stage; a seating capacity of at least 1,000 seats; and dressing rooms, storage areas, and other related amenities needed for an accredited theater production.

ELIGIBLE EXPENDITURES

Production and Performance Expenditures

Under the bill, only eligible "production and performance expenditures" count towards the credit's calculation. The bill defines these expenditures as the exchange of cash or its equivalent for goods or services related to developing, producing, or performing an accredited theater production or for its operating expenditures incurred in Connecticut. This includes expenditures for the following:

1. design, construction, and operation (e.g., sets, special and visual effects, costumes, wardrobe, make-up, and accessories);
2. sound, lighting, staging, facility expenses, rentals, per diems, and accommodations;
3. up to \$250,000 per week for salaries, wages, fees, and other compensation and benefits for services performed in Connecticut ("payroll");
4. goods or services related to the production's national marketing, public relations, and advertising (i.e., print, electronic, television, billboard, and other advertising types)("advertising and public relations expenditures"); and
5. transportation, as described below.

The bill defines "transportation expenditures" as those for (1) packing, crating, and transporting, to and from Connecticut, sets, costumes, and other property and equipment for an accredited theater

production and (2) transporting the production's cast and crew to and from here. However, it excludes costs for any of the following:

1. transporting tangible property and equipment used only for filming and not in an accredited theater production and
2. indirect costs, expenditures reimbursed by a third party, or any amount paid to an individual or entity for their participation in the profits from the production's exploitation.

CREDIT APPLICATION AND APPROVAL PROCESS

Initial Certification

Under the bill, an accredited theater production's production company (i.e., person, firm, partnership, trust, estate, or other entity) may apply to the Department of Economic and Community Development (DECD) commissioner, as she prescribes, for a production's initial certification. (In the case of a partnership, its sole proprietor, owner, or member may apply.) The application must include information about the following:

1. the accredited theater production and production company presenting it,
2. the applicant's relationship to the production or production company,
3. the qualified production facility where the production will be performed, and
4. any other information and data the commissioner deems needed to evaluate the application.

If the DECD commissioner approves the application, she must issue an initial certification notice to the production company and Department of Revenue Services (DRS) commissioner.

Final Certification

Once the accredited theater production's performance has been completed, the production company must apply to the DECD commissioner for a final certification. The application must include a cost report and a certified public accountant's certification that this report, in the accountant's opinion, is accurate. The commissioner must, within 30 days after a production company submits a complete application, determine (1) whether to approve a final accredited theater production certificate and (2) the credit amount allowed. Once approved, she must (1) issue the certificate to the production company and specify the credit amount allowed and (2) notify the DRS commissioner of this information.

CREDIT CLAIMS AND TRANSFERS

Applicable Taxes and Eligible Claimants

Production companies that receive a final accredited theater production certificate from DECD may claim the credit against the personal income, corporation business, insurance premiums, or utility companies tax, but not the withholding tax. (Withholding tax is income tax paid on a taxpayer's behalf by qualifying Connecticut employers.) If the company is an S corporation or entity treated as a partnership for federal income tax purposes, its shareholders or partners may claim the credit. If it is a single member limited liability company (LLC) disregarded as an entity separate from its owner, the LLC's owners may claim it, as long as the owner is subject to the personal income or corporation business tax.

The credit must be claimed for the income or tax year in which it was earned. Unused credits may be carried forward for up to three years and may be sold, assigned, or transferred in whole or part.

Financial Penalty

The bill imposes a financial penalty equal to the credit amount on any production company that submits information to the DECD commissioner that it knows to be fraudulent or false. This penalty is in addition to other penalties provided by law.

Limits on Post-Certification Remedies

The bill (1) exempts any credits sold, assigned, or transferred under its provisions to a post-certification remedy and (2) limits the DECD and DRS commissioners' power to further audit or examine the production and performance expenditures for which the credit was allowed unless there is the possibility of material misrepresentation or fraud. The bill gives the commissioners the sole remedy of recovering the credits from the production company that committed the fraud or misrepresentation.

Examinations

The bill authorizes the DECD and DRS commissioners to examine the books, papers, and records related to the information or data an accredited theater production provided with its final certification application in order to determine that a credit claim is correct.