DEPARTMENT OF TAXATION
2008 Fiscal Impact Statement

1. Patron Jackson H. Miller

2. Bill Number HB 1393

House of Origin:
X **Introduced**
_____ **Substitute**
_____ **Engrossed**

Second House:
_____ **In Committee**
_____ **Substitute**
_____ **Enrolled**

3. Committee House Finance

4. Title Tax Preferences; Motion Picture Production Companies.

5. Summary/Purpose:

Tax Credits

This bill would create a series of individual and corporate income tax credits for motion picture production companies meeting certain criteria. The first credit is for 15 percent of qualifying expenses when these expenses total at least $250,000. As defined in the bill, qualifying expenses are the value of goods and services leased or purchased and compensation and wages paid.

In addition, the bill would create a credit against the same taxes based on the total aggregate payroll for Virginia residents employed in connection with the production of a film in Virginia. When total production costs in Virginia are at least $250,000 but not more than $1 million, the credit would equal 10 percent of the total aggregate payroll of such residents. This additional credit would be equal to 20 percent of the total aggregate payroll of such residents when total production costs in Virginia exceed $1 million.

The final income tax credit this bill would create is for 10 percent of the total aggregate payroll for Virginia residents employed for the first time as a member of a production crew in connection with the production of a film in Virginia. If the residents reside in a "fiscally distressed" area of Virginia, the credit would be increased to 20 percent of the total aggregate payroll of these individuals.

The amount of credits that exceed the production company's tax liability would be "redeemable" by the Tax Commissioner within 90 days after the filing of the company's return. The aggregate amount of all credits issued under this law would be capped at $7.5 million.

The bill would require TAX to publish, with assistance from the Virginia Film Office, an annual report by November of each year detailing the credits claimed for the year ending the previous Dec. 31. In addition, TAX would be required to promulgate regulations in accordance with the Administrative Process Act consistent with the provisions of the bill. The tax credit created by this bill would be effective for taxable year beginning on and after January 1, 2008.

Retail Sales and Use Tax Exemption

This bill would remove the July 1, 2009 expiration date for the Retail Sales and Use Tax exemption for audio and video works as well as expand the exemption. Under the provisions of this bill, the exemption would cover certain streaming video, digital image or other audiovisual work. This bill would also expand the exemption to cover the purchase or lease of tangible personal property or services for use or consumption by a motion picture production crew in the production of a motion picture film in Virginia, including but not limited to lodgings and meals, from July 1, 2008, to July 1, 2009.

Motor Vehicle Sales and Use Tax

This bill would exempt from the Virginia Motor Vehicle Sales and Use Tax vehicles leased in connection with the production of a motion picture film in Virginia. This provision would be effective July 1, 2008.

6. **Fiscal Impact Estimates are:** Preliminary. (See Line 8.)

7. **Budget amendment necessary:** Yes.
   Page 1, Revenue estimates

8. **Fiscal implications:**

Administrative Costs

TAX has not assigned any administrative costs to this bill because the changes required by a single bill such as this can be implemented as part of the annual changes to our systems and forms. As stand-alone legislation, TAX considers implementation of this bill as "routine," and does not require additional funding.

TAX will provide specific administrative costs on any legislation that is not "routine." Additionally, TAX will review all state tax legislation likely to be enacted prior to the passage by each house. If the aggregate number of routine bills likely to pass either house is unusually large, it is possible that additional resources will be required. If so, TAX will identify the costs at that time.

Revenue Impact

The income tax provisions of this bill will reduce General Fund revenues by $7.5 million, likely beginning in FY 2009. Based upon the historic number of film and television productions and their associated expenses publicly available from the Virginia Film Office, production companies in aggregate will easily be able to claim the maximum amount of credit allowed.

The impact of the expansion of a sales tax exemption to include motion picture production companies will result in an unknown, but significant, revenue loss in FY 2009 and FY 2010. These losses will affect all Funds receiving revenue from the sales and use tax, as well as localities. Lost General Fund (only) revenue due solely to the lodging and meals could range from approximately $26,000 (based on the 2006 data) to $41,000 (based on 2007 data).

Finally, the exemption of leased vehicles from the motor vehicle sales tax will result in an unknown revenue loss beginning in FY 2009. This revenue loss will impact the Commonwealth Transportation Fund and localities.

9. Specific agency or political subdivisions affected:

Department of Taxation

Department of Motor Vehicles

Virginia Film Office

All Localities

10. Technical amendment necessary: No.

11. Other comments:

Current Law

The audiovisual works sales and use tax exemption was originally enacted by the 1995 General Assembly. The exemption was enacted to encourage the production of films and other audiovisual works in Virginia, and to also encourage national programmers and producers to establish operations in Virginia. This law provides a limited exemption for leases or rentals of copyrighted audio and videotapes for public exhibition by movie theaters and licensed radio and television stations.

The exemption applies to the lease, rental, license, sale, other transfer, or use of any audio or video tape, film or other audiovisual work when acquired for the purpose of licensing, distributing, broadcasting, commercially exhibiting or reproducing the work or using or incorporating the work in another such work. The exemption also applies to the provision of production services or fabrication related to the production of any portion of a qualifying audiovisual work. The exempt production services include scriptwriting, photography sound, musical composition, special effect, animation, adaptation, dubbing, mixing, editing, cutting and provision of production facilities or equipment. The transfer of certain tangible personal property related to production services is exempt, as is equipment and related parts and accessories for use in the production of exempt audiovisual works.

State Comparison

The following table summarizes the tax incentives offered to the film industry by each state.

STATE	TAX INCENTIVES As of December 2007
Alabama:	State and local sales and use tax exemption for the purchase or lease of equipment, materials and services used in production. Additionally, no state and local lodgings tax for rooms used by production staff.
Alaska:	No state sales tax. No state individual income tax.
Arizona:	A tiered transferable income tax credit for in-state expenditures spending. A motion picture production company is exempt from the transaction privilege tax for purchase of machinery, equipment and other property used directly in the motion picture production, lodging leases or rentals, catered food and construction of in-state buildings or structures.
Arkansas:	Full gross receipts and use tax refund on the purchase of property and services including lodging in connection with production costs. To qualify, a production company must spend at least $500,000 within six months or $1 million within 12 months in connection with the production.
California:	No sales or use tax on production or postproduction services on a motion picture or TV film. No sales and use tax on services generally. No sales and use tax on 45% of the charges for sets. No state hotel tax on occupancy, however, cities or counties that impose a local tax have a tax exemption for occupancies in excess of 30 days.
Colorado:	A 10% refund. Must spend at least 75% of its production expenditures in state and 75% of the actors and crew must be Colorado residents. Annual statewide cap is $500,000 for 2006-07 and increases with inflation in subsequent years. No sales and use tax on film company services. No hotel Occupancy tax for hotel stays in excess of 30 days.
Connecticut:	Provides a 30% transferable production tax credit on expenditures related to film, TV and digital media with a minimum in-state spend of $50,000. The credit for compensation paid is capped at the fist $15 million (1/1/08). Beginning 1/1/09, only 50% of expenses or costs will be allowed when incurred outside the state and used within the state. No hotel occupancy tax for hotel stays in excess of 30 days.
Delaware:	No state sales tax.

STATE	TAX INCENTIVES As of December 2007
Florida:	Sales and use tax exemption for the purchase or lease of motion picture, video or other equipment if used exclusively as an integral part of production activities in the preparation of motion pictures, tapes, TV or productions produced for commercial use or sale. If equipment and personnel used belong to the producer of a qualified motion picture, no tax on fabrication labor. Rebate program on in-state expenditures. No state individual income tax.
Georgia:	Sales and use tax exemption for the purchase or lease of production and postproduction equipment and services for use in qualified production activities in the state. Transferable income tax credit equal to 9% of all in-state costs for in-state film and TV investments of $500,000 or more. Additional 3% credit on wages (up to $500,000) paid to GA residents and 3% credit for productions in designated distressed communities. An additional 2% credit for TV productions that spend more than $20 million.
Hawaii:	A refundable income tax credit of 15% (for production in counties with a population greater than 700,000) or 20% (for production in counties with a population equal to or less than 700,000), which is deductible from net income tax liability, of the costs incurred in the state in the production of motion picture and television films, and up to 7.25% rebate for the for transient accommodation tax (hotel room tax). Must spend at least $200,000 in Hawaii. Overall cap of $8M.
Idaho:	Idaho provides for a rebate of the 6% sales tax on tangible personal property when $200,000 is spent on a wide variety of qualifying expenses. No hotel occupancy tax on hotel stays of 30 days or longer.
Illinois:	Sales and use tax exemption for products of photo-processing produced for use in motion pictures for public commercial exhibition. A transferable 20% income tax credit for Illinois production expenditures, plus a 15% credit for Illinois labor expenditures capped at the first $100,000 in wages for each employee. Repealed 1/1/08. The 14.9% hotel tax is reimbursed for stays in excess of 30 days.
Indiana:	State-owned and state university owned property is available free of location fees for virtually all productions. Production related businesses with tax liability in Indiana can qualify for up to a 10% tax credit based on investment in equipment or buildings. No hotel tax on stays of 30 days or longer.
Iowa:	A transferable Iowa income tax credit based on 25% of qualified in-state expenditures go to the "Producer" if there is a minimum in-state spend of $100,000 based exclusively on Iowa-based companies or Iowa resident individuals. Transferable Iowa income tax credit based on 25% of qualified in-state expenditures to go to the "Investor."
Kansas:	A credit equal to 30% of in-state production and postproduction related expenditures including wages, fringes, and payments to personal services corporations. Minimum in-state spending of $100,000 for productions over 30 minutes. Credits are capped at $2 million annually. No hotel tax on stays of 28 days or longer.

STATE	TAX INCENTIVES As of December 2007
Kentucky:	Sales and use tax refund for purchases made by a motion picture production company in connection with filming in Kentucky if the company films or produces one or more motion pictures in the state.
Louisiana:	Provides a transferable investor tax credit equal to 25% of the in-state investment made if it is in excess of $300,000. The employment tax credit will be transferable and equal to 10% of the salaries in-state residents hired (no salaries in excess of $1million will qualify).
Maine:	A wage rebate equal to 10% of non-Maine residents' wages and 12% of Maine residents' wages on qualified productions. Income tax offset for companies investing in Maine productions. Sales and use tax exemption for tangible personal property and services used primarily in production. Hotel occupancy taxes are rebated after 28 consecutive days.
Maryland:	State sales and use tax exemption for the purchase or lease of production or postproduction equipment, services, supplies, props and sets used in the production of motion picture, television, video, commercials and corporate films. No state sales tax for hotel stays in excess of 30 days. Subject to additional appropriation, wage rebate program, up to $12,500 per eligible employee for film and television production activity in the state if in-state spending exceeds $500,000. The maximum rebate granted for any single production is capped at $2 million state capped total rebates of $6.875 million.
Massachusetts:	A choice of a transferable employment credit (or refundable credit equal to 90% of the credit value), equal to 25% of Massachusetts sourced income, if an individual's salary is not equal to or greater than $1 million. The incentive also includes a film production tax credit (FPTC) equal to 25% of in-state production costs (not including payroll expenses used to claim the payroll credit) if 50% of the total production costs or 50% of principal photography days occur in the state. There is a minimum in-state spending requirement of $50,000.
Michigan:	A refundable tax credit (essentially a rebate) for motion pictures, television series or pilots and commercials (once they spend a minimum of $200,000 in state). There is a graduated scale for the rebate amount depending on the amount of in-state spend, ranging from a 12% to a 20% refund. The funding for the entire program is capped at $7 million each calendar year.
Mississippi:	For all feature films, television projects, documentaries, or commercials: a tiered rebate beginning at 20% rebate for all base investment in-state production-related expenditures, excluding non-resident payroll. Rebate capped at $5 million per production. A rebate equal to 10% of the portion of the base investment for non-resident employees' salaries less than $1 million, subject to income tax withholding. A reduced sales tax (7% to 1½ %) for motion picture equipment (camera, lighting, audio, projection, editing, etc.). A sales tax exemption for the purchase of film, videotape, set building materials, set dressing, props, wardrobe, fabric, make-up, most expendable items.

STATE	TAX INCENTIVES As of December 2007
Missouri:	Provides a transferable/carry forward (5yrs) income tax credit up to 35% of expenditures in the State. Productions must spend a minimum of $100,000 for features and productions in excess of 30 minutes and $50,000 for productions less than 30 minutes. No credit on compensation in excess of $1 million. $4.5 million/year available for total credits. No sales tax on hotel stays after 31 days.
Montana	Film and TV productions eligible for a 14% refundable tax credit on up to $50,000 in wages paid to Montana residents. Also a refundable tax credit of 9% on their total qualified expenditures in the state. No state sales tax. No business equipment tax on motion picture related vehicles and equipment brought into the state for the first 180 days. State 7% accommodations tax rebate for stays in excess of 30 days.
Nevada:	No corporate or individual Income tax. Low hotel room tax.
New Hampshire:	No state sales tax. Individual Income tax on interest and dividends only.
New Jersey:	Sales tax exemption for all film and video related machinery and equipment as well as services of installing, repairing and maintaining the equipment, used directly in production and post production of motion pictures, television or commercials. Loan Guarantee Program up to a maximum of $1.5 million (or an amount no greater than 30% of any loan for the film project that is derived from other sources, whichever is less), to production companies if 70% of the shooting days are in the state and at least 50% of the below-the-line expenses are in state. The state will provide a transferable corporate and income tax credit equal to 20% of in-state production related expenses for films, TV shows and series. 60% of the total production expenses must be incurred in the state. The program is capped at $10 million per fiscal year and includes a roll-over provision.
New Mexico:	State sales tax exemption on all production costs including set construction, wardrobe, facility and equipment rental, all production and postproduction services. A 25% refundable income tax credit on in-state film production and postproduction expenditures. Also, guaranteed investments may be considered for up to 100% of the estimated production costs, capped at $15 million per project. After 30 days, the 4% lodgers tax is waived for hotel guests.
New York:	Comprehensive State, New York City and local sales and use tax exemption for machinery, equipment and services used in production and postproduction activities in the production of feature length films, television programs, music videos and commercials. A 10% corporate/partnership/individual refundable income tax credit for film and television productions (no commercials or music videos) for below-the-line in-state expenses including postproduction if 75% of the aggregate sound stage work is performed in a NY production facility. Credit is capped at $60 million; the cap is a rolling cap. An additional 5% refundable tax credit against corporate, partnership, or unincorporated business tax liability against New York City tax liability. The City's annual credit cap is $30 million.

STATE	TAX INCENTIVES As of December 2007
North Carolina:	Refundable income tax credit equal to 15% of qualifying production expenses for in-state leased or purchased items, must have qualifying in-state expenses of at least $250,000. Limitations: per feature credit cap of $7.5 million and assets purchased in excess of $25,000. No wages for individuals earning in excess of $1 million for a single production. Sales and use tax (1%) rate, on the purchase and rentals to motion picture production firms of cameras, films, set construction materials, as well as chemicals and equipment used to develop and edit film that is used to produce release prints.
Ohio:	No state sales tax on hotel stays in excess of 30 days.
Oklahoma:	Oklahoma Film Enhancement Rebate now funded up to $5 million per year. Provides a rebate of up to 15% of Oklahoma production expenditures for films/ TV/Commercials filming in the state. Minimum production budget of $500,000 and $300,000 spent in Oklahoma. Must employ residents for at least 50% of crew to qualify for full 15% rebate. The rebate cannot be used in conjunction with the sales tax exemption. Sales tax exemption on sales of tangible, personal property or services to a motion picture or television production company to be used or consumed in connection with a feature or television production. State sales tax rebate on hotel stays after 30 days.
Oregon:	Oregon Production Investment fund offers a 10% rebate on production expenditures in Oregon (capped at $250K maximum rebate for an individual film and $30,000 per episode for a television series.) Minimum $1 million spending to qualify. They can only commit rebates to productions to the extent that there are monies in the fund to cover those rebates. Beginning Fall, 2005, rebates are available for approximately 6.2% of qualified wages to productions. Productions must spend at least $1-million in Oregon to qualify. No state sales tax. Lodging taxes waived for rooms held longer than 30 days.
Pennsylvania:	A 25% transferable Film Production Tax Credit expenses incurred in PA. Must have 60% of the total production expenses incurred in Pennsylvania. No hotel tax for stays in excess of 30 days or more. No more than $75 million per year can be awarded.
Rhode Island:	Provides a 25% motion picture transferable tax credit for all Rhode Island production related expenditures, including salaries. The film/TV/commercials/ video game production must be filmed primarily in the state of Rhode Island and have a minimum budget of $300,000. There is also a non-transferable investor tax credit for Rhode Island residents who invest in film/TV/commercials or video games filmed primarily in Rhode Island. The investor will receive a 15% tax credit for a production with a budget of $300,000-$5million. If the investment is in a production with a budget over $5million, it is a 25% tax credit.
South Carolina:	If you spend $250,000 in-state: available sales and use tax exemption for the purchase of equipment and supplies and an exemption for the State accommodations tax (7%), if you spend $1 million in-state you receive a maximum of 20% rebate for total aggregate payroll for persons subject to SC income tax withholding (excludes individual salaries of $1 million or more) this is capped at $10 Million per year and up to a 30% rebate for purchases/rentals of certain in-state goods and services.

STATE	TAX INCENTIVES As of December 2007
South Dakota:	4% refund for contractors' excise, sales and use taxes paid in connection with films spending over $250,000 (on taxable costs) in the state.
Tennessee:	Tiered rebate program for in-state qualified production expenditures 13% base rebate, 2% additional rebate if at least 25% of the cast and/or crew are Tennessee residents, an additional 2% (maximum of $100,000 rebate) if the production company spends at least $20,000 for music created by Tennessee residents or for recording music in Tennessee. Out of state production companies must spend a minimum of $500,000 per production. Approximately $20 million appropriated for the rebate program. Sales and use tax refund for out-of-state motion picture companies for goods and services purchased or rented in Tennessee if the company spends at least $500,000 within a 12-month period.
Texas:	A rebate program equal to 5% for film, TV, video game productions and commercials. $1 million minimum in-state spend for film and TV productions, 70% of production crew, actors and extras must be Texas residents, 80% of the production must be filmed in Texas. Cap per film is $2 million, $2.5 million cap for TV productions, $250,000 for video games. Program funding is $10 million per year for 2 years; additional funds will be available for projects for approved plans justifying the fiscal activity that exceeds the cost of the additional grant amounts requested. Comprehensive sales and use tax exemption for purchased or rented equipment or services used in the production of a motion picture or a video recording for ultimate sale, license or broadcast. No sales tax on hotel rooms for stays in excess of 30 days.
Utah:	Effective July 25, 2007, through the Motion Picture Incentive Fund approved productions will receive a 15% rebate on Utah expenditures, with a cap of $500,000 per project and a minimum spend of $1 million in the State. Also available, a sales and use tax exemption for purchase or lease of machinery and equipment granted to film, television and video productions. The transient room tax exemption for a stay of 30 consecutive days or longer.
Vermont:	State sales and use tax exemption for the purchase or lease of goods and services used in the production of films, television programs or commercials. Credit for nonresident income tax for commercial film production if Vermont income tax exceeds income tax rate in the state of residence. No hotel or meal tax after 30 days. A qualified production with at least $1 million in VT production expenditures can apply for a grant of 10% of qualified production expenditures. Annual overall cap of $1 million.
Virginia:	$1.2 Million funding for a performance-based incentive will provide a cash rebate at the Governor's discretion, taking into consideration length of filming, job creation, trainees hired, goods and services purchased. An exemption from state sales and use taxes and hotel taxes for stays of 30 days or more in many localities. State owned locations are provided free of charge.

STATE	TAX INCENTIVES As of December 2007
Washington:	A rebate of 20% of qualified production expenses on a feature film with expenditures in WA of at least $500,000 and $300,000 for a television episode. Per production cap of $1 million. Overall cap of $3.5 million. Sales and use tax exemption for the purchase or rental of production equipment and services used in motion picture or video production or post-production. No sales and use tax on vehicles used in production. No tax on hotel stays in excess of 30 days. No state individual income tax.
Washington, DC:	A grant program funded at $1.6 million annually, to reimburse productions for expenses related to the production of nationally distributed film and television projects that spend a minimum of $500,000 in qualified expenses in a period of five or more days within DC. The grant will not exceed the lesser of 10% of the qualified expenses or 100% of the taxes paid to DC on the qualified expenses.
Wisconsin	A refundable individual/corporate income/franchise tax credit equal to 25% of in-state production-related expenditures and a non-refundable wage credit equal to 25% up to the first $25,000 for in-state wages (excluding the 2 highest paid employees). Also provides for a credit equal to sales/use tax paid on purchases of tangible personal property and taxable services directly used in a production.
Wyoming:	A rebate program equal to 15% on in-state production related purchases, leases, salaries and benefits (except the two highest paid actors) if a minimum of $500,000 is spent in state. The rebate also covers payments for preproduction, production, post-production and digital media effects services rendered in the state. The annual cap for the program is $1 million. Wyoming businesses offer production companies filming in Wyoming a 10% discount on production related services including hotels/motels, restaurants, caterers, etc. No tax on hotel stays in excess of 30 days. No state corporate or individual income tax.

Proposal

Tax Credits

This bill would authorize a credit against the taxes in the an amount equal to 15 percent of the production company's qualifying expenses for any motion picture production company with qualifying expenses of at least $250,000 with respect to a motion picture film production filmed in Virginia. The credit must be computed based on all of the taxpayer's qualifying expenses incurred with respect to the production, not just the qualifying expenses incurred in the taxable year.

"Qualifying expenses" would mean the sum of the following amounts spent in Virginia by a production company for the production of a motion picture film or an episodic television series filmed in Virginia:

- Goods and services leased or purchased. For goods and services with a purchase price or rental fee of $25,000 or more, the amount included in qualifying expenses is the purchase price less the fair market value of the good at the time the production is completed.

- Compensation and wages. Compensation and wages less the amount paid to an individual who directly or indirectly receives compensation in excess of $1 million for personal services with respect to a single production.

This bill would allow an additional credit equal to 10 percent of the total aggregate payroll for Virginia residents employed in connection with the production of a film in Virginia when total production costs in Virginia are at least $250,000, but not more than $1 million. The additional credit would be equal to 20 percent of the total aggregate payroll of such residents when total production costs in Virginia exceed $1 million.

This bill would allow the production company an additional credit equal to 10 percent of the total aggregate payroll for Virginia residents employed for the first time as a member of a production crew in connection with the production of a film in Virginia. In the event that such residents reside in a "fiscally distressed" area of Virginia, the additional credit would be equal to 20 percent of the total aggregate payroll of such residents.

This bill would allow the taxpayer to claim the credits on a tax return filed for the taxable year in which the production activities are completed. The amount of credits that exceed the production company’s tax liability would be “redeemable” by the Tax Commissioner within 90 days after the filing of the company’s return in a form that would allow such credits to be transferable.

The amount of any credit attributable to partnership, electing small business corporation (S corporation), or limited liability company must be allocated to the individual partners, shareholders, or members, respectively, in proportion to heir ownership or interest in such business entities. The amount of the credit must not exceed $7.5 million.

The credit would not be allowed for any productions that:

- Is political advertising;

- Is a television production of a news program or live sporting event; or

- Contains obscene material.

This bill would require the Department of Taxation, in consultation with the Virginia Film Office, to publish by November of each year the following information, for the preceding 12-month period ending the preceding December 31:

- The location of sites used in a production for which a credit was claimed.

- The qualifying expenses for which a credit was claimed, classified by whether the expenses were for goods, services, or compensation paid by the production company.

- The number of individuals employed in Virginia with respect to credits claimed.

- The total cost to the general fund of the credits claimed.

Retail Sales and Use Tax

This bill would remove the July 1, 2009 expiration date for the Retail Sales and Use Tax exemption for audio and video works as well as expand the exemption. Under the provisions of this bill, the exemption would cover certain streaming video, digital image or other audiovisual work. This bill would also expand the exemption to cover the purchase or lease of tangible personal property or services for use or consumption by a motion picture production crew in the production of a motion picture film in Virginia, including but not limited to lodgings and meals, from July 1, 2008, to July 1, 2009.

Motor Vehicle Sales and Use Tax

This bill would exempt from the Virginia Motor Vehicle Sales and Use Tax vehicles leased in connection with the production of a motion picture film in Virginia. This provision would be effective July 1, 2008.

Similar Legislation

Senate Bill 667 is identical to this bill.

House Bill 711 would remove the July 1, 2009 expiration date for the Retail Sales and Use Tax exemption for audio and video works.

cc : Secretary of Finance

Date: 1/28/2008 jkl
HB1393F161