

# DEPARTMENT OF TAXATION

## 2020 Fiscal Impact Statement

1. **Patron** Lashrecse D. Aird

2. **Bill Number** HB 1318

3. **Committee** House Appropriations

**House of Origin:**

           **Introduced**

  X   **Substitute**

           **Engrossed**

4. **Title** Motion Picture Production Tax Incentives;  
Extension of Sunset Dates and Unallocated  
Credits

**Second House:**

           **In Committee**

           **Substitute**

           **Enrolled**

### 5. **Summary/Purpose:**

This bill would extend the sunset date of the Motion Picture Production Tax Credit from January 1, 2022 to January 1, 2027. This bill would also extend the sunset date for the media-related sales and use tax exemption for certain tangible and intangible property used in the production of an audiovisual work from July 1, 2022 to July 1, 2027.

This bill would allow unallocated credits, below the \$6.5 million annual credit cap, to be carried forward and available for allocation in future fiscal years. This bill would provide that this provision is effective for the aggregate amount of unallocated credits that have accumulated since the first fiscal year the credit was available, Fiscal Year 2011.

If enacted during the 2020 Regular Session, this bill would be effective on July 1, 2020.

**This is a Virginia Tourism Authority bill.**

6. **Budget amendment necessary:** Yes.

Item(s): Page 1, Revenue Estimates

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

### 8. **Fiscal implications:**

#### Administrative Costs

The Department of Taxation ("the Department"), Virginia Film Office, and Virginia Tourism Authority consider implementation of this bill as routine, and do not require additional funding.

#### Revenue Impact

This bill would have an unknown negative General Fund revenue impact. Under current law, no more than \$6.5 million of Motion Picture Production Tax Credits may be allocated to taxpayers per fiscal year. The bill would provide an affirmative mechanism for

permitting unallocated credits, from the enactment date of the credit, to pour over to future fiscal years for allocation to taxpayers. Therefore, this bill would have a negative revenue impact to the extent that such unallocated credits are provided to taxpayers in excess of the statutory annual credit cap for a given fiscal year.

Since the Motion Picture Production Tax Credit was enacted during the 2011 Session, approximately \$400,000 of the credits that were available for taxpayers, in aggregate, have not been allocated by the Virginia Film Office. This bill would permit the Virginia Tourism Authority to access such unallocated credits to issue in future years and, in effect, increase the annual credit caps for such years in excess of the current annual credit cap. Accordingly, the negative impact in Fiscal Year 2021 would not exceed \$400,000. The impact in future years is unknown and would depend on the amount of unallocated credits that would accrue and be allocated in such years.

The extension of the credit sunset dates and the provisions regarding the Virginia Tourism Authority's responsibilities with respect to the credit would have no revenue impact.

**9. Specific agency or political subdivisions affected:**

Department of Taxation  
Virginia Film Office  
Virginia Tourism Authority

**10. Technical amendment necessary:**

**11. Other comments:**

Motion Picture Production Tax Credit

During the 2011 Session, the General Assembly enacted the Motion Picture Production Tax Credit. This credit consists of a series of refundable individual and corporate income credits for motion picture production companies that meet certain criteria. A motion picture production company with qualifying expenses of at least \$250,000 may receive a credit equal to 15 percent of qualifying expenses or 20 percent of qualifying expenses if the production is filmed in an economically distressed area of Virginia.

A motion picture production company may receive 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. This additional credit is equal to 20 percent of the total aggregate payroll of such residents when total production costs in Virginia exceed \$1 million.

A motion picture production company may also receive an additional credit equal to 10 percent of the total aggregate payroll for Virginia residents employed for the first time as actors or members of a production crew in connection with the production of a film in Virginia.

“Qualifying expenses” are defined as 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.
- Compensation and wages of up to \$1 million per individual for personal services with respect to a single motion picture production.

Under current law, the Virginia Film Office is generally responsible for administering the credit. The Department is responsible for administering the credit bank with respect to the majority of Virginia’s tax credits, including the Motion Picture Production Tax Credit.

The aggregate amount of all credits that may be allocated to taxpayers is capped at \$6.5 million per fiscal year. Neither the existing statutory language regarding the Motion Picture Production Tax Credit nor the Appropriation Act provide a mechanism for the retention of unallocated credits. In its role as the agency responsible for administering several credit programs and administering the credit bank for nearly all of Virginia’s tax credits, including the Motion Picture Production Tax Credit, the Department has applied this interpretation regarding annual credit caps. Therefore, under current law, no more than \$6.5 million of Motion Picture Production Tax Credits may be allocated per fiscal year, and no unallocated credits may be retained for issuance in future fiscal years.

#### Film Tax Credits in Other States

Thirty-two states and the District of Columbia allow film tax incentives. Eighteen states (Alaska, Arizona, Delaware, Florida, Idaho, Indiana, Iowa, Kansas, Michigan, Missouri, Nebraska, New Hampshire, North Dakota, South Dakota, Vermont, West Virginia, Wisconsin and Wyoming) do not provide film tax incentives.

#### Media-Related Sales and Use Tax Exemption

Beginning July 1, 1995 and ending July 1, 2022, Virginia exempts the equipment, parts and accessories used in the production of audiovisual works, as well as

- The lease, rental, license, sale, other transfer, or use of any audio or video tape, film or audiovisual work for the purpose of using or incorporation into an audiovisual work;
- The provision of production services or fabrication in connection with an audiovisual work; or
- The transfer or use of tangible personal property incident to the performance of such services or fabrication.

#### Sunset Dates for Income Tax Credits and Sales Tax Exemptions

Section 3-5.14 of the Appropriation Act provides that the General Assembly may not advance the sunset date for any existing income tax credit or sales tax exemption beyond

June 30, 2022. Any new income tax credit or sales tax exemption enacted by the General Assembly prior to the 2021 Session must have a sunset date not later than June 30, 2022. This requirement does not apply to sales tax exemptions related to nonprofit entities or to income tax credits or sales tax exemptions with sunset dates after June 30, 2022 that were enacted or advanced during the 2016 Session. In addition, this requirement does not apply to the Motion Picture Production Tax Credit.

Further, during the 2012 Session, the General Assembly enacted House Bill 246, which prohibits legislation from adding a new credit or renewing an existing credit unless the legislation contains a sunset date of not longer than five years from the effective date of the new or renewed credit.

### Proposed Legislation

This bill would extend the sunset date of the Motion Picture Production Tax Credit from January 1, 2022 to January 1, 2027.

This bill would allow unallocated credits, below the \$6.5 million annual credit cap, to be carried forward and available for allocation in future fiscal years. This bill would provide that this provision is effective for the aggregate amount of unallocated credits that have accumulated since the first fiscal year the credit was available, Fiscal Year 2011.

This bill would make the Virginia Tourism Authority responsible for all portions of the credit that are currently the responsibility of the Virginia Film Office. This bill would require the Virginia Tourism Authority to certify the final credit amount to the taxpayer and the Tax Commissioner. In addition, this bill would require that such certificate specify the fiscal year in which such credit may be refunded by the Department. The Department would be prohibited from paying interest on any credits issued.

The Virginia Tourism Authority would be required to annually report to the Department the amount of credits that have been authorized for each fiscal year and the amount of credits that may be claimed for the current fiscal year by each taxpayer.

This bill would also extend the sunset date for sale and use tax exemption on the equipment, parts and accessories used in the production of certain audiovisual works, as well as (i) the lease, rental, license, sale, other transfer, or use of any audio or video tape, film or audiovisual work for the purpose of using or incorporation into an audiovisual work; (ii) the provision of production services or fabrication in connection with an audiovisual work; or (iii) the transfer or use of tangible personal property incident to the performance of such services or fabrication from July 1, 2022 to July 1, 2027.

If enacted during the 2020 Regular Session, this bill would be effective on July 1, 2020.

### Similar Bills

**House Bill 139** would establish an individual and corporate income tax credit for certain expenses related to the production of an episodic television series, commercial advertisement, or digital interactive media production.

**House Bill 1533** would extend the Motion Picture Production Tax Credit sunset date, and increase the annual credit cap for the credit from \$6.5 million to \$13 million, and require \$6.5 million of the total amount to be allocated for motion picture productions in economically distressed areas of the Commonwealth.

**Senate Bill 923** would extend the sunset date for the Motion Picture Production Tax Credit from January 1, 2022 to January 1, 2025.

cc : Secretary of Finance

Date: 2/4/2020 RWC  
HB1318F161