

WEST VIRGINIA FILM INDUSTRY INVESTMENT ACT

Tax Credit Review and Accountability Report

**Tax Years 2007-2008
and
Tax Year 2009 (Preliminary)**

Submitted by:

West Virginia Film Office
West Virginia Department of Commerce, Division of Tourism

January 19, 2010

TABLE OF CONTENTS

Executive Summary	1
Introduction	2
Original Intent of the Act.....	2
Tax Year 2007	2
Tax Year 2008	2
(A) Improvements to Statute	2
(B) Overview of Applications.....	2
(C) Credits Allocated	3
Tax Year 2009	3
(A) Improvements to Statute	3
(B) Overview of Applications.....	3
(C) Credits Allocated	4
Tax Credit Review and Accountability Report Criteria.....	4
Claims of the Credit.....	4
Table 1 – Statistical Data for Tax Year 2007	5
Table 2 – Statistical Data for Tax Year 2008.....	5
Table 3 – Preliminary Statistical Data for Tax Year 2009.....	5
Conclusion	5

EXECUTIVE SUMMARY

West Virginia Code §11-13X-11 requires a periodic tax credit review and accountability report evaluating the cost effectiveness of tax credits for the West Virginia Film Industry Investment Act ("Act" or "Program").

Tax credits are limited to Ten Million Dollars (\$10,000,000) every fiscal year. Unallocated credits expire at the end of each fiscal year and may not be carried over. The base amount of the tax credit is 27% of qualified expenditures with an additional 4% increase for the hiring of 10 or more West Virginia workers or talent. The 4% component is an important aspect of the Act — one which encourages the hiring of our state's labor, thus providing on-going experience and training opportunities.

Applications to the Program are accepted at any time. Eligible projects include feature length theatrical or direct-to-video motion pictures; made-for-TV motion pictures; TV pilots, series, and miniseries; commercials; music videos; and commercial still photography. A 6-person Review Committee has 30 days to review each application and evaluates an application based upon various criteria, including that which is mandated by statute. As set forth in the legislative rules, the Review Committee consists of the following members:

1. Secretary of Commerce, or designee;
2. Secretary of Education and the Arts, or designee;
3. Tax Commissioner, or designee;
4. Tourism Commissioner, or designee;
5. Film Office Director, or designee; and
6. an additional Film Office representative appointed by the Tourism Commissioner.

Once approved, the Film Office "reserves" tax credits for the applicant. The applicant must begin filming within 120 days of approval or relinquishes its right to claim the credits (applicants may request extensions). Following completion of filming, the applicant must hire an independent certified public accountant to conduct an audit of the approved project, utilizing Agreed Upon Procedures prepared by the State Tax Department. The applicant files the audit report and the Review Committee evaluates all data. If all data is in order, the Film Office issues a tax credit voucher for the final approved amount. Tax credits are only issued for the amount of the final accounting of qualified expenditures and may not exceed the amount originally approved (unless applicant previously filed a modification application).

The Review Committee implements a checks and balances system to ensure that the Program operates accurately and within the intent of the statute and legislative rules. An important element of the Program requires an independent audit, as mentioned above. A tax credit voucher is not issued until the applicant has met all requirements of the program and submits a Certificate of Good Standing from the Tax Department. The Film Office also provides copies of all applications, tax credit allocations, approval letters, and tax credit vouchers to the Tax Commissioner.

Additional Findings

- The Act first became effective July 1, 2007. The Program operates on a Fiscal Year basis (July 1 to June 30); the data in this report is provided on a Tax Year basis (January to December).
- The Film Industry Investment Tax Credit can be used against the Corporation Net Income Tax, Business Franchise Tax, and the Personal Income Tax.
- There were no applications to the Program in 2007; therefore, there were no tax credit allocations or tax credit claims.
- Improvements were made to the Act during the 2008 legislative session, which became effective March 10, 2008. Eight (8) applications were received relating to six (6) projects. Additional data for Tax Year 2008 is provided elsewhere in this report.

- Additional improvements were made to the Act during the 2009 legislative session, which became effective July 9, 2009. Sixteen (16) applications were received relating to twelve (12) projects. Additional data for Tax Year 2009 is provided elsewhere in this report.
- The intent of the Act is to recruit new film industry business into the state, while at the same time, allowing in-state production companies and filmmakers to participate in the Program. It is just as important to support our in-state companies and filmmakers because it provides additional opportunities for our state's workforce to be hired and our vendors to be utilized. Building an experienced workforce is key to the continued success of this Program.
- Out-of-state and in-state companies participating in the Program are hiring West Virginia workers to staff projects and utilizing the services of West Virginia vendors.
- As it stands now, the Program has become competitive with other states that implement incentive programs, and the Film Office has seen an increase in applications as well as a marked increase in inquiries from potential applicants.

INTRODUCTION

Original Intent of the Act

The West Virginia Film Industry Investment Act ("Act" or "Program") was originally enacted July 1, 2007. As stated in W. Va. Code §11-13X-2: "The legislature finds that the encouragement of economic growth through the production of motion pictures and other commercial film or audiovisual projects in this state is in the public interest and promotes the general welfare of the people of this state. In order to encourage greater economic growth and development in this state, there is hereby enacted the West Virginia film industry investment act."

TAX YEAR 2007

There is no data to report for Tax Year 2007. No applications were submitted to the Program.

The Act originally provided for non-refundable, non-transferable tax credits for eligible, approved projects. The intent of the legislation was to recruit new business into the state, but as written with the non-transferability of the tax credits, it did not. After advertising and marketing the Program to the industry, including conducting one-on-one meetings with key executive decision makers, it was evident that the statute needed to be amended.

TAX YEAR 2008

(A) Improvements to Statute

The Film Office, with the support of the WV Tax Department and the WV Department of Commerce, sought improvements to the statute during the 2008 legislative session, which became effective March 10, 2008. Among the improvements was the switch from "non-transferable" to "transferable" tax credits (the credits would remain "non-refundable").

(B) Overview of Applications

The Film Office duly advertised and marketed the Program to the industry, including one-on-one meetings with an increased number of key executive decision makers. Because of the improvements to the

statute, interest in the Program increased. The Film Office received eight (8) applications relating to six (6) projects. Of the eight (8) applications:

- 5 were approved
 - 2 were issued tax credit vouchers in Tax Year 2009
 - 1 is still active
 - 2 expired because filming did not begin within the required timeframe *[one project reapplied in Tax Year 2009]*
- 2 were denied *[both projects reapplied and were approved in Tax Year 2008]*
- 1 withdrew from the Program

(C) Credits Allocated

Tax credits allocated in Tax Year 2008 totaled \$3,345,291.62, which included allocations made to the two expired projects (it does not include the withdrawn project).

TAX YEAR 2009

(A) Improvements to Statute

After consulting with the Motion Picture Association of America, Tax Credits LLC, and a number of other film industry incentive experts, it was determined that one issue in the statute remained that was hindering the industry from applying to the Program, which was a paragraph that read as follows:

Tax credits will be subject to recapture, elimination or reduction if it is determined by the Tax Commissioner that a taxpayer was not entitled to the credit, in whole or in part, in the tax year in which it was claimed by the taxpayer. Transferors, and transferees of sold, transferred or assigned tax credits bear joint and several liability for any tax, interest or penalty resulting from recapture, elimination or reduction of a credit claimed pursuant to this article.

Of particular concern was the phrase "joint and several liability". Such language leaves an innocent buyer unprotected; therefore, this paragraph alone would prevent an applicant from identifying any buyers for the tax credits.

The Film Office, with the support of the WV Tax Department and the WV Department of Commerce, sought improvements to the statute during the 2009 legislative session. One of the key elements to the improvement was to replace the aforementioned paragraph with the following:

The Tax Commissioner shall not seek recourse against the transferee for any portion of the credit that may be subsequently disqualified.

The legislature approved the amendments, which became effective July 9, 2009. Subsequently, interest in the Program soared.

(B) Overview of Applications

The Film Office duly advertised and marketed the Program to the industry, including one-on-one meetings with an increased number of key executive decision makers. The Film Office received sixteen (16) applications relating to twelve (12) projects. Of the sixteen (16) applications:

- 15 were approved
 - 4 were issued tax credit vouchers
 - 1 related to an expired project from 2008 that reapplied in 2009
 - 10 are still active
- 1 was denied and then approved upon re-application

(C) Credits Allocated

Tax credits allocated in Tax Year 2009 totaled \$4,349,927.19, which included allocation to a project that expired in Tax Year 2008 and reapplied in 2009.

TAX CREDIT REVIEW AND ACCOUNTABILITY REPORT CRITERIA

West Virginia Code §11-13X-11 requires a periodic tax credit review and accountability report evaluating the cost effectiveness of tax credits for the West Virginia Film Industry Investment Act ("Act" or "Program").

Section 11-13X-11 reads as follows:

- (a) Beginning on the first day of the third taxable year after the passage of this article and every two years thereafter, the film office shall submit to the Governor, the President of the Senate and the Speaker of the House of Delegates a tax credit review and accountability report evaluating the cost effectiveness of the film industry investment act during the most recent two-year period for which information is available. The criteria to be evaluated shall include, but not limited to, for each year of the two-year period:
 - (1) The number of eligible companies claiming the credit;
 - (2) The dollar amount of tax credit certificates issued to taxpayers;
 - (3) The number of new businesses created by the tax credit;
 - (4) The number of new jobs, if any, created by the tax credit;
 - (5) The amount of direct expenditures made on qualified projects; and
 - (6) The cost of the credit.
- (b) Eligible companies claiming the credit shall provide any information the Tax Commissioner and the film office may require to prepare the report: Provided, That the information provided is subject to the confidentiality and disclosure provisions of section five-d and five-s, article ten of this chapter. However, notwithstanding the provisions of section five-d and five-s, article ten of this chapter, the Tax Department is hereby authorized to disclose to the film office and to the development office such tax information as may be necessary to compile the report required by this section and the report required by section twelve of this article.

This report covers applications to the Program from its inception through Tax Year 2009 (some data is preliminary). The report also covers tax credit claims for Tax Years 2007 and 2008; tax credit claim data for Tax Year 2009 is not yet available. All data will be updated when the next tax credit review and accountability report comes due.

Claims of the Credit

The following tables provide an assortment of data, such as the number of eligible companies claiming the credit, dollar amount of vouchers issued, and the amount of direct expenditures made on qualified projects. To maintain confidentiality, the West Virginia State Tax Department suppresses data when the number of observations is five or less. No individual applicant data is disclosed; data is provided in the aggregate.

Table 1 – Statistical Data for Tax Year 2007

Statistical Item	Value
Number of Eligible Companies Claiming the Credit	Zero
Dollar Amount of Tax Credit Certificates Issued to Taxpayers	\$0
Number of New Businesses Created by the Tax Credit	Zero
Number of New Jobs, If Any, Created by the Tax Credit	Zero
Amount of Direct Expenditures Made on Qualified Projects	\$0
Cost of the Credit	\$0

Table 2 – Statistical Data for Tax Year 2008

Statistical Item	Value¹
Number of Eligible Companies Claiming the Credit	(D)
Dollar Amount of Tax Credit Certificates Issued to Taxpayers	\$0
Number of New Businesses Created by the Tax Credit	Two (2)
Number of New Jobs, If Any, Created by the Tax Credit	Complete data not available at time of report
Amount of Direct Expenditures Made on Qualified Projects	\$153,971.85 ²
Cost of the Credit	(D)

(D) values are based on the Tax Department's count of actual credit claimants numbering less than five. To maintain confidentiality, the West Virginia State Tax Department suppresses data when the number of observations is five or less.

¹ Amended tax returns and credit applications will likely alter the above values.

² Some projects are still active and have not yet submitted audit reports, which will likely alter the above values.

Table 3 – Preliminary Statistical Data for Tax Year 2009

Statistical Item	Value¹
Number of Eligible Companies Claiming the Credit	(D)
Dollar Amount of Tax Credit Certificates Issued to Taxpayers	\$96,654.39
Number of New Businesses Created by the Tax Credit	Three (3)
Number of New Jobs, If Any, Created by the Tax Credit	Complete data not available at time of report
Amount of Direct Expenditures Made on Qualified Projects	\$162,782.00 ²
Cost of the Credit	(D)

(D) values are based on the Tax Department's count of actual credit claimants numbering less than five. To maintain confidentiality, the West Virginia State Tax Department suppresses data when the number of observations is five or less.

¹ Amended tax returns and credit applications will likely alter the above values.

² Some projects are still active and have not yet submitted audit reports, which will likely alter the above values.

CONCLUSION

The data provided in this report is based upon applications filed with the Film Office for Tax Years 2008 and 2009 as well as preliminary data compiled by the Tax Department for Tax Year 2008. While not required at this time, additional preliminary data was provided for Tax Year 2009 to demonstrate the growth of the Program. (There were no applications received in Tax Year 2007; hence, there is no data to report.) When the next report comes due, various statistics and values identified under Tax Years 2008 and 2009 will likely be altered because (a) some projects are still active and have not yet submitted audit reports and (b) amended tax returns and credit applications could cause variances.

As illustrated throughout this report, the West Virginia Film Industry Investment Act is still in its infancy. Following various improvements to the statute in Tax Years 2008 and 2009, the Program has become more effective and competitive with other states and is showing an increase in overall interest, as evidenced by the increase in applications to participate in the program. The Film Office anticipates a continued increase in applications, job growth and overall economic growth for the West Virginia film industry in 2010.