**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 12‑6‑3770 SO AS TO ALLOW A REFUNDABLE INCOME TAX CREDIT TO A DIGITAL MEDIA COMPANY PRODUCING A STATE‑CERTIFIED PRODUCTION EQUAL TO TWENTY‑FIVE PERCENT OF THE BASE INVESTMENT MADE BY THE DIGITAL MEDIA PRODUCTION COMPANY IN THE TAXABLE YEAR, TO DEFINE TERMS, AND TO SET FORTH THE PROCESS BY WHICH THE CREDIT MAY BE CLAIMED.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Article 25, Chapter 6, Title 12 of the 1976 Code is amended by adding:

“Section 12‑6‑3770. (A) For the purposes of this section:

(1) ‘Base investment’ means the actual funds expended in South Carolina by a state‑certified production as production‑related costs for design or development of digital media, including costs for payroll and component parts.

(2) ‘Component parts’, with respect to digital media, means all elements that are integral to the functioning or development of such products and platforms. Component parts include, but are not limited to, software, computer code, image files, music files, audio files, video files, scripts and plays, concept mock‑ups, software tools, testing procedures, computer servers, workstations, server racks, hard drives, optical drives, monitors, keyboards, integrated video and audio equipment, networking routers, switches, network cabling, and any other computer‑related hardware necessary to create or operate a digital interactive media product or platform.

(3) ‘Department’ means the South Carolina Department of Commerce.

(4)(a) ‘Digital media’ includes, but is not limited to:

(i) video game industries that develop technology and content intended for online‑multiplayer, console, mobile, and social environments;

(ii) immersive and augmented reality industries focused on the display of imagery and information in three dimensional and holographic form, video‑mapping, multi‑touch surfaces, and other forms of advanced visualization; and

(iii) the design of new platforms and display environments for envisioning social, medical, scientific and industrial information through the use of creative computing.

(b) ‘Digital media’ does not include:

(i) software development designed and developed primarily for internal or operational purposes of the digital media production company; and

(ii) largely static Internet sites designed to provide information about a person, business, company, or firm.

(5) ‘Digital media production company’ means a company engaged in the business of producing digital media intended for:

(a) film and television production;

(b) video game production; and

(c) aiding in education, defense, disaster relief, medical, health care, or scientific visualization. ‘Digital media production company’ does not mean or include a company owned, affiliated, or controlled, in whole or in part, by a company or person that is in default on a loan made by the State or a loan guaranteed by the State.

(6) ‘Director’ means the Director of the South Carolina Department of Commerce.

(7) ‘Expended in South Carolina’ means an expenditure:

(a) to lease immovable property located within the state;

(b) as compensation for services performed in the state; or

(c) to purchase or lease tangible personal property within the state where the transaction is subject to the state sales tax. A transaction that is subject to the state sales or tax includes transactions which are also subject to a statutory exemption.

(8) ‘Payroll’ means salary, wages, or other compensation subject to South Carolina income tax withholdings.

(9) ‘Person’ means a natural person, corporation, partnership, limited partnership, limited liability company, joint venture, trust, estate, or association.

(10)(a) ‘Production expenses’ means preproduction and production expenditures in the state directly relating to a state‑certified production including, but not limited to:

(i) testing software, source code development, patches, updates, sprites, three‑dimensional models, and level design;

(ii) costs associated with photography and sound synchronization, lighting and related services;

(iii) rental of South Carolina facilities and equipment;

(iv) purchase of prepackaged audio files, video files, photographic files, or libraries;

(v) purchase of licenses to use prerecorded audio files, video, or photographic files; and

(vi) development costs associated with producing audio files and video files to be used in the production of the end product under development.

(b) “Production expenses” do not include:

(i) expenditures for or related to marketing, promotion and distribution;

(ii) administrative, payroll, and management services which are not directly related to management of the state‑certified production;

(iii) food, entertainment, and lodging expenses;

(iv) amounts that are later reimbursed by the state;

(v) costs related to the transfer of tax credits;

(vi) amounts that are paid to persons or entities as a result of their participation in profits from the exploitation of the production; and

(vii) any application fee, or state or local taxes.

(11) ‘Resident’ or ‘resident of South Carolina’ means a natural person and, for the purpose of determining eligibility for the tax incentives provided by this section, any person domiciled in the state of South Carolina and any other person who maintains a permanent place of abode within the state and spends in the aggregate more than six months of each year within the state.

(12) ‘State‑certified production’ means a digital media production or a component part thereof approved by the department.

(B)(1) A digital media company producing a state‑certified production is allowed a refundable income tax credit equal to twenty‑five percent of the base investment made by the digital media production company in the taxable year. To the extent that the base investment is expended on payroll for South Carolina residents employed in connection with the state‑certified production, additional tax credits shall be earned at the rate of ten percent of the payroll.

(2) All entities taxed as corporations for South Carolina income tax purposes shall claim any credit on their corporation income tax return. Individuals, estates, and trusts shall claim their share of any credit on their income tax return. Entities not taxed as corporations shall claim their share of any credit on the returns of the partners or members as follows:

(a) corporate partners or members shall claim their share of any credit on their corporation income tax returns.

(b) individual partners or members shall claim their share of any credit on their individual income tax returns.

(c) partners or members that are estates or trusts shall claim their share of any credit on their fiduciary income tax returns.

(3)(a) Any tax credits allocated to a person and not previously claimed by any taxpayer against his South Carolina income tax may be transferred or sold by such person to another person, subject to the following conditions:

(i) a single transfer or sale may involve one or more transferees. The transferee of the tax credits may transfer or sell such tax credits subject to the conditions of this subitem.

(ii) transferors and transferees shall submit to the Department of Commerce and the Department of Revenue in writing, a notification of any transfer or sale of tax credits within thirty days after the transfer or sale of such tax credits. The notification shall include the transferor’s tax credit balance prior to transfer, the state‑certified production number, the name of the state‑certified production, the transferor’s remaining tax credit balance after transfer, all tax identification numbers for both transferor and transferee, the date of transfer, the amount transferred, a copy of the tax credit certificate, and any other information required by the Department of Commerce or the Department of Revenue.

(b) Failure to comply with this subitem results in the disallowance of the tax credit until the taxpayers are in full compliance. The transfer or sale of this credit does not extend the time in which the credit can be used. The carryforward period for credit that is transferred or sold begins on the date on which the credit was originally earned. The transferee shall apply such credits in the same manner and against the same taxes as the taxpayer originally awarded the credit.

(4) At the time of final certification of tax credits, a company may elect, on a one‑time basis, to receive a rebate of the credits. The amount of the rebate shall be eighty‑five percent of the face value of the credits. Upon receipt of the final tax credit certification letter and any necessary additional information, the Department of Revenue shall make payment to the company, or its irrevocable designee, which may include but not be limited to a bank or other lender, in the amount to which he is entitled.

(C)(1) The department shall establish an application process for the credit awarded by this section. A company seeking the credit shall apply with the department and the department shall review the application and any other information which it deems appropriate for determination of the project’s eligibility for initial certification. For a project deemed eligible, the department shall provide an initial certification of the project as a state‑certified production to the company and to the Department of Revenue. The initial certification shall be effective for expenditures made no more than six months prior to the date of initial certification and shall be valid until the project is completed. The initial certification shall include a unique identifying number for each state‑certified production.

(2) Prior to final certification of tax credits of a state‑certified production or any portion thereof, the company shall submit to the department a cost report of production expenditures. The cost report of expenditures is subject to an agreed‑upon procedures engagement conducted by a certified public accountant in accordance with statements on standards for attestation engagements established by the American Institute of Certified Public Accountants. The accountant shall issue a report in the form of procedures and findings. The accountant shall be a certified public accountant licensed in the State of South Carolina and shall be an independent third party unrelated to the company. The agreed‑upon procedures must be established by the director, with assistance from the South Carolina Association of Certified Public Accountants. The department may request additional audits of the project expenditures, the cost of which shall be borne by the company.

(3) Upon completion of all or a portion of a state‑certified production, the department shall review the production expenses and, if approved by the director, issue a final tax credit certification letter to the company and the Department of Revenue. The certification letter shall include the identifying number assigned to that state‑certified production in the initial certification.

(4) As a condition for receiving certification of tax credits pursuant to this section, state‑certified productions may be required to display the state brand or logo, or both, as prescribed by the secretary.

(5)(a) If the department finds that funds for which a company received credits according to this section are not actually expended in South Carolina as a production‑related cost of a state‑certified production, then the company’s state income tax for the taxable period shall be increased by the amount necessary for the recapture of credit provided by this section.

(b)(i) Credits previously granted to a taxpayer, but later disallowed, may be recovered by the Department of Revenue through any collection remedy authorized by law and initiated within three years from December thirty‑first of the year in which the credits were earned.

(ii) The only interest that may be assessed and collected on recovered credits is interest at a rate of three percentage points above the prime rate, which shall be computed from the original due date of the return on which the credit was taken.

(iii) The provisions of this subsubitem are in addition to and shall not limit the authority of the Department of Revenue to assess or to collect under any other provision of law.

(D) The provisions of this section shall not apply to any investments or expenditures that qualify for tax credits under any other provision of this chapter. Further, a taxpayer shall not receive any other tax credit for any expenditures for which the taxpayer has received a tax credit or tax rebate under this section.

(E) The Department of Commerce and the Department of Revenue shall promulgate regulations necessary to implement this section.

(F)(1) Upon a determination by the Director of the Office of General Services Division of the State Budget and Control Board of the underutilization of state property by a state agency, the department may negotiate below‑market rates for temporary use, no more than twenty‑four months, of space for the underutilized property. The negotiations and temporary use are exempt from the provisions of the State Consolidated Procurement Code. The digital media production company shall reimburse costs at normal and customary rates incurred by the state agency to the state agency, including costs required to repair any damage caused by the digital media production company to real or personal property of the State.

(2) The state agency or local political subdivision that owns the property determined to be underutilized may appeal that determination of underutilization to the State Budget and Control Board.”

SECTION 2. This act takes effect upon approval by the Governor and applies to base investments made after December 31, 2011.

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