DEPARTMENT OF TAXATION
2010 Fiscal Impact Statement

1. Patron L. Louise Lucas

2. Bill Number SB 257

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

3. Committee Senate Finance

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

4. Title Income Tax Credit; Motion Picture Production Companies

5. Summary/Purpose:

TAX understands that the Patron will be introducing an amendment in the nature of a substitute for this bill. This fiscal impact statement is applicable to that substitute version.

This bill would create a series of transferrable individual and corporate income tax credits for motion picture production companies meeting certain criteria. The first credit would be for 15 percent of qualifying expenses, or 20 percent of such expenses if the production is filmed in an economically distressed area of the Commonwealth, 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 an actor or a member of a production crew in connection with the production of a film in Virginia.

The aggregate amount of all credits that would be allowed to be issued for the 2010-2012 biennium and each biennium thereafter would be capped at $5 million per biennium.

The tax credits created by this bill would be effective for taxable year beginning on and after January 1, 2010.

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

This bill would produce a General Fund revenue loss. This bill would limit the amount of credits than may be allocated by the Virginia Film Office in any one biennium to $5 million. However, there would be a lag between when a credit would be allocated and when the credit would be allowed to be claimed because the credit would first be available to be claimed after production in Virginia is completed. Based on the historic number of film and television productions and their associated expenses publicly available from the Virginia Film Office, the Virginia Film Office would easily be able to allocate the maximum amount of credits allowed per biennium. Therefore, this bill would likely reduce General Fund revenues by $1.25 million in Fiscal Year 2011, $3.75 million in Fiscal Year 2012 and $2.5 million in each fiscal year thereafter.

As this bill would encourage film production companies to bring film productions to Virginia, the income produced by this activity would likely offset the lost tax revenue.

9. Specific agency or political subdivisions affected:

Department of Taxation
Virginia Film Office

10. Technical amendment necessary: No.

11. Other comments:

State Comparison

STATE	TAX INCENTIVES January 1, 2010
Alabama:	Effective 1/1/09 a 25% refundable tax credit/rebate for a variety of productions from film and TV to videos, interactive games, digital media, interactive websites, etc if the in-state spend is at least $500,000, but not more than $10 million. A single episode in a television series would be considered a single production project. The new law also provides a 35% rebate for wages paid to Alabama residents. There is a separate credit eligibility requirement for sound tracks as long as the in-state expenditures are at least $50,000 and no more than $300,000. The credits/rebates are capped in fiscal years ending September 30 at $5 million for 2009, $7.5 million for 2010, and $10 million for 2011 and beyond.
Alaska:	A transferable tax credit equal to 30% of in-state qualified production expenditures (including payroll for services performed in Alaska) for film, television, video and commercial productions. An additional 10% credit for hiring Alaska residents, an additional 2% credit for expenditures made in a rural area and a 2% credit for productions made between October 1 and March 30. Minimum in-state spend of $100,000 The aggregate amount of tax credits may not exceed $100 million.
Arkansas:	Effective April, 2009: A 15% rebate on all production expenditures if there is a minimum in-state spending of $50,000 in a 6-month period. Eligible productions include: films, TV, digital media, trailers, videos, commercials and interactive games. Also includes an additional 10% rebate for in-state below the line wages, no rebate on wages of $500,000 and above and no per production cap. The program funding is subject to appropriation ($5 million expected in 2009).
California:	Beginning 7/1/2009: 20% Tax Credit for a qualified motion picture which includes Feature Films ($1 million minimum - $75 million maximum production budget) MOWs or miniseries ($500,000 min. prod. budget) New television series licensed for original distribution on basic cable ($1 million min. bud; 1/2 hour shows and other exclusions apply). A 25% Tax Credit for a qualified TV series, without regard to episode length, that filmed all of its prior season or seasons outside of California. An independent film ($1 MM−$10 MM budget that is produced by a company that is not publicly traded and that publicly traded companies do not own more than 25% of the producing company.) Eligibility Requirements: satisfy above criteria and meet the following conditions: 75% test (production days or total production budget) in CA, Principal photography must commence no later than 180 days after application approval; Postproduction completed within 30 months of receiving tax credit application approval.
Colorado:	A 10% refund: For a production company that originates the film production in Colorado the 10% refund if the in-state below-the-line expenditures equal or exceed $100,000; For a production company not originating the film production activities in Colorado the 10% refund if in-state expenditures equal or exceed $1 million. 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.
Connecticut:	Provides a tiered incentive based on in-state spend up to a maximum of 30% transferable production tax credit on expenditures related to film, TV and digital media. The credit for compensation paid is capped at the first $15 million. Production credits may be carried forward for 3 years. Beginning 1/1/09, only 50% of expenses or costs will be allowed when incurred outside the state and used within the state.
Florida:	Rebate program on in-state expenditures. There are 4 queues; 1) Films, TV, commercials music videos, expenditures in excess of $650,000 get a15-22% rebate, 2) multiple commercials/ music videos minimum combined expenditures of $500,000 and a $100,000 per project minimum get 15-20% rebate, 3) Indies spending $100,000-$625,000 get 15%-17% rebate, 4) Digital media projects - 10% rebate.
Georgia:	Transferable income tax credit equal to 20% of all in-state costs for in-state film and TV investments of $500,000 or more. Additional 10% credit if the production agrees to include a "qualified Georgia promotion"
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. Repealed on 1/1/2016.

Illinois:	A transferable 30% income tax credit for Illinois production expenditures including in-state wages ($100,000 minimum spend for productions 30 minutes or longer), plus a 15% credit for Illinois labor expenditures for residents from impoverished areas; payroll expenditures are capped at the first $100,000 in wages for each employee.
Indiana:	A refundable tax credit equal to 15% of qualified production expenditures with in-state spend greater than $100,000 for films or TV productions less than $6 million. Refundable tax credit up to 15% of qualified production expenditures if in-state spend of $6 million or more and the total annual state cap on these productions will be $5 million.
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 under certain conditions. Minimum in-state spending of $100,000 for productions over 30 minutes. Credits are capped at $2 million annually.
Kentucky:	Beginning 2009, 20% refundable tax credit for production and post production related expenditures including payroll with a minimum in-state spend of $500,000. Includes a provision requiring script review for appropriate content.
Louisiana:	Provides a transferable investor tax credit equal to 30% of the in-state investment made if it is in excess of $300,000. The transferable employment tax credit is equal to 5% of the salaries in-state residents hired (no salaries in excess of $1million will qualify). (New program includes an alternative option to transfer credits through the Governor's Office.)
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.
Maryland:	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 and the state cap varies each year.
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. The incentive also includes a film production tax credit (FPTC) equal to 25% of in-Commonwealth 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 Commonwealth. There is a minimum in-Commonwealth spending requirement of $50,000 in order to qualify for all the production incentives and the payroll and FPTC include a five-year carry forward provision.
Michigan:	A refundable credit equal to 40% (42% in "core community areas") for in-state expenditures (a required in-state spend minimum of $50,000) including above the line talent both in-state and out of state. There is a credit equal to 30% for payroll expenditures related to below the line, out of state talent. The compensation eligible for the credit is capped at $2 MM.
Mississippi:	A rebate program for a $20,000 minimum in-state spending provides rebates equal to 20% for in-state investments (excluding payroll). A separate 25% rebate for the employment of in-state residents and a 20% rebate on non-residents in connection with the qualified production (up to and including the first $1 million), withholding must be made on all eligible payroll. The per project rebate is capped at $8 million and the annual amount of available rebates is capped at $20 million per fiscal year.
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.
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 percent on their total qualified expenditures in the state.
New Jersey:	Includes a transferable tax credit equal to 20% of in-state production related expenses for films, TV shows, series and digital media productions. Additionally, sixty percent of the total production expenses, excluding post-production costs, must be incurred in the state. The film/TV and video program is capped at $10 million per fiscal year digital media is capped at $5 million per year and includes a roll-over provision. If the funds are exhausted in any fiscal year, any remaining qualified taxpayers will be first to receive the credit in the subsequent fiscal year.
New Mexico:	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. Loan structures would have to be "fully and unconditionally guaranteed" by an entity with an investment grade bond rating; and equity structures require presales/distribution.

New York:	Film and television and commercial productions receive tax exemptions whether they are produced and delivered electronically or in tangible form. A 30% corporate/partnership/individual refundable income tax credit for film and television productions for below-the-line in-state expenses including postproduction (and actors with non-speaking roles) if 75% of the aggregate sound stage work (excluding postproduction) is performed in a NY production facility at least 7,000 square feet. If less than $3 million (excluding postproduction) is attributed to the production facility related costs, then 75% of the aggregate shooting days outside of the facility must be in NY in order for NY location costs to qualify for the credit. The annual cap is a rolling cap; if the cap is exhausted in one year the projects will be eligible in the following year on a first-come first-served basis. An additional 5% refundable tax credit against corporate, partnership, or unincorporated business tax liability against New York City tax liability with the same qualification parameters as the state credit.
North Carolina:	Refundable income tax credit equal to 15% (increases to 25% 1/1/2010) 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, qualifying expense limited to the purchase price less the fair market value of the asset at the completion of the production. Wages up to the first $1 million (withholding must be made) included.
Ohio:	Beginning 7/1/2009 refundable production tax credit program including film, TV, video and digital media equal to 25% of production expenditures (with a minimum in-state spend of $300,000) including out of state wages. There is a separate 35% refundable credit for wages paid to Ohio residents. Also includes a per production cap of $5 million and an annual cap on available credits of $10 million in year one and $20 million in year two with a sunset of 6/30/2011.
Oklahoma:	Oklahoma Film Enhancement Rebate now funded up to $5 million per year. Provides a rebate of up to a maximum of 37% of Oklahoma production expenditures for films/ TV/Commercials filming in the state. Must employ residents for at least 50% of B-T-L crew to qualify for full rebate. Rebates vary depending on the percentage of Oklahoma residents employed in the productions. Crew tiers are waived for $5 million in-state spent. Production company must provide evidence of a completion bond and evidence of a recognizable domestic or foreign distribution agreement within one (1) year from the end of principal photography. The rebate cannot be used in conjunction with the sales tax exemption.
Oregon:	The incentive program provides a rebate of 20% of Oregon-based goods and services, and an additional cash payment of up to 16.2% of wages paid to production personnel. Minimum $1 million spending to qualify for rebate on production expenditures in Oregon. The annual cap on rebates is $5 million per fiscal year (July).
Pennsylvania:	A 25% transferable production tax credit for expenses incurred in PA. Available for feature films, TV shows and series, and commercials intended for a national audience. Must have 60 percent of the total production expenses incurred in Pennsylvania. No more than $42 million in FY 09-10 (and $60 million in 2010-2011) year in credits can be awarded.
Puerto Rico:	Provides up to a 40% investment tax credit for motion picture and television expenditures paid to Puerto Rico Businesses or below the line talent if at least 50% principal photography is in Puerto Rico. The credit is available for projects first approved by the Film Commission once applicants pay ¼ of 1% of the film's budget for a license. Local investors will partner with non-Puerto Rican based companies to help them access the investment tax credit.
Rhode Island:	Provides a 25% motion picture transferable tax credit for all Rhode Island production related expenditures with a $15 million annual cap on the total credits approved. This also includes salaries for people working on the ground, in R.I. 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. Additionally, 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 (with a 3 year carryforward) 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 (with a 3 year carryforward).
South Carolina:	Provides a maximum of 20% rebate for total aggregate in-state payroll for persons (crew, actors, extras) subject to SC income tax withholding (excludes individual salaries of $1 million or more) this is capped at $10 Million per year (10% rebate up to $3,500 for out of state payroll) (must spend $1 million in-state to qualify). Also provides up to a 30% rebate for purchases/rentals of certain in-state goods and services.
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. ("Day players" and extras not included in determining the 25%), 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.

Texas:	A new rebate program enacted in 2009 equal to 5-17% for film, TV, video game productions and commercials. $250,000 minimum in-state spend for film and TV productions, 70% of production crew, actors and extras must be Texas residents, 60% of the production must be filmed in Texas. Includes a provision related to content review of scripts. Cap per film is $2 million, $2.5 million cap for TV productions, $250,000 for video games.
Utah:	Effective 1/1/09 up to a 20% rebate or refundable tax credit beginning for films and TV programs. Both the credits allocated and the rebates are capped. $7,793,700 for the credit program each fiscal year 09-10 and 2010-11, and the rebates are capped at $2,206,300 in each fiscal year as well as a per production rebate cap of $500,000.
Vermont:	Credit for nonresident income tax for commercial film production if Vermont income tax exceeds income tax rate in the state of residence.
Virginia:	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. The rebate will be paid to qualified production companies at the end of physical production and payment will be issued upon completion of a report of Virginia expenditures.
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.
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.
West Virginia:	Transferable tax credit with a minimum in-state spend of $25,000, up to 27% for a broad array of in-state production and post production expenditures (including payroll) plus an additional 4% if ten or more full-time employees are in-state residents (including payroll service company employees) bringing the maximum credit to 31%. 5% of the credit is not available for expenditures attributable to a production, which is eligible for the Federal New Markets Tax Credit Program.
Wisconsin:	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).
Wyoming:	A rebate program up to 15% on in-state production related purchases, leases, salaries and benefits (except the two highest paid actors) if a minimum of $200,000 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.

Proposal

This bill would authorize a credit against the individual and corporate income tax in an amount equal to 15 percent of the production company's qualifying expenses, or 20 percent of such expenses if the production is filmed in an economically distressed area of the Commonwealth, 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.

"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 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. If direct or indirect compensation and wages are paid to an individual for personal services with respect to a single production in excess

of $1 million, however, only the first $1 million would be considered a qualifying expense. An individual would be deemed to receive compensation indirectly when a production company pays a personal service company or an employee leasing company that pays the individual.

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 an actor or a member of a production crew in connection with the production of a film in Virginia.

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;

- Contains obscene material; or

- Is a reality television production.

The taxpayer would be required to apply for a credit to the Virginia Film Office prior to the start of production in Virginia. In addition, the taxpayer would be required to enter into a memorandum of understanding with the Virginia Film Office that at a minimum provides the requirements which the taxpayer must meet in order to receive the credits, including but not limited to the estimated amount of money to be spent in Virginia, the timeline for completing production in Virginia, and the maximum amount of credits allocated to the taxpayer.

Once the taxpayer had satisfied all of the requirements in the memorandum of understanding to the satisfaction of the Virginia Film Office and completed production in Virginia, the taxpayer would be able to claim the applicable amount of credits up to the amount that had been allocated by the Virginia Film Office on a return filed for the taxable year in which the Virginia production activities were completed.

The amount of any credit attributable to partnership, electing small business corporation (S corporation), or limited liability company may be allocated to the individual partners, shareholders, or members, respectively, in proportion to their ownership or interest in such business entities.

The taxpayer would be able to carry forward unused credits for a maximum of 3 consecutive taxable years following the taxable year in which the credit was first allowed to be claimed.

The taxpayer would be able to transfer any unused but otherwise allowable credits for use by another taxpayer on Virginia income tax returns. Any taxpayer to whom a credit has been transferred would be able to use such credit for the taxable year in which the transfer occurred and unused amounts would be carried forward for a maximum of 4 consecutive taxable years following the taxable year in which the credit was originally issued.

The aggregate amount of all credits that would be allowed to be issued for the 2010-2012 biennium and each biennium thereafter would be capped at $5 million per biennium.

This bill would require TAX, 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.

This bill would also require TAX to establish guidelines implementing the provisions of these credits. The guidelines would be exempt from the Administrative Process Act.

This bill would also provide a severability clause, which would state that the requirements regarding Virginia expenditures and the employment of Virginia residents are integral to the purpose of the credit and not severable.

The tax credits created by this bill would be effective for taxable year beginning on and after January 1, 2010.

Similar Bills

House Bill 861 is identical to this bill as introduced and it is TAX's understanding that the Patron will be introducing an amendment in the nature of a substitute that is identical to the amendment in the nature of a substitute being introduced for this bill.

cc : Secretary of Finance

Date: 1/29/2010 JKM
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