

WEST VIRGINIA FILM INDUSTRY INVESTMENT ACT

Tax Credit Review and Accountability Report – Tax Years 2009-2010

*(Includes Supplement for Tax Year 2008
&
Preliminary Data for Tax Years 2011-2012)*

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EXECUTIVE SUMMARY

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The West Virginia Film Industry Investment Act ("Act" or "Program") was originally enacted July 1, 2007.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."

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 amount of the tax credit is 27% of qualified expenditures, with an additional 4% available when 10 or more West Virginians are hired full-time during principal photography. 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 evaluates each application within 30 days based upon statutory and other criteria. As set forth in the legislative rules, the Review Committee (referred to herein as the Film Credit Development 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 an application is approved, the Film Credit Development Committee allocates (reserves) tax credits for the applicant. The applicant must begin filming within 120 days of approval or relinquishes the right to claim the credits (extensions may be granted). Following completion of filming, the applicant must hire an independent certified public accountant to prepare an Expense Verification Report ("EVR") utilizing Agreed Upon Procedures prepared by the State Tax Department. The applicant submits the EVR and other supporting documentation to the Film Credit Development Committee for evaluation. If all data is complete, the Film Office issues a tax credit voucher for the amount of the final accounting of qualified expenditures, which may not exceed the amount originally allocated (unless a modification was approved).

The Film Credit Development Committee implements a checks and balances system to ensure that the Program operates accurately and within the intent of the statute and legislative rules. A tax credit voucher is not issued until the applicant has met all requirements of the Program. For a subsequent transfer/sale, a tax credit voucher may not be issued by the Film Office until the Transferor/Seller submits a Certificate of Good Standing from the State Tax Department. The Film Office 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.

- As noted in the January 19, 2010, Tax Credit Review and Accountability Report, there were no applications to the Program in 2007; therefore, there were no tax credit allocations or claims.
- Improvements were made to the Act during the 2008 and 2009 legislative sessions, which became effective March 10, 2008, and July 9, 2009, respectively.
- For convenience, and to demonstrate the growth of Program participants, preliminary data is provided for Tax Years 2011 and 2012.
- The intent of the Act is to recruit new film industry business into the state, while also allowing in-state production companies and filmmakers to participate in the Program. Supporting in-state companies and filmmakers provides additional opportunities for the state's workforce to be hired and businesses to be utilized. Experienced in-state workforce is key to the continued success of this Program.
- In its current state, the Program has become competitive with other states that implement incentive programs, and the Film Credit Development Committee has seen an increase in applications as well as a marked increase in inquiries from potential applicants.

OVERVIEW OF APPLICATIONS & CREDITS ALLOCATED AND ISSUED

The table below is a brief overview of applications received and credits allocated and issued. The data for Tax Year 2008 is provided as a supplement to the January 19, 2010, report. The data for Tax Years 2011-2012 is preliminary and included to demonstrate the growth of Program.

Tax Year	Total No. of Applications Received	No. of Projects	Status of Approved Applications	Credits Allocated	Credits Issued	Unissued Approved Credits
2008	8	6	5	\$3,345,291.62	\$46,191.97	\$0.00
	<i>(5 were approved; 2 were denied; 1 withdrew)</i>		<i>(2 were issued tax credits; 3 expired)</i>			
2009	16	12	16	\$4,349,927.19	\$973,135.95	\$14,850.00
	<i>(16 were approved)</i>		<i>(12 were issued tax credits; 1 expired; 1 was denied and approved upon reapplication; 1 did not incur minimum spend; 1 is still active)</i>			
2010	11	8	11	\$5,520,568.26	\$4,868,928.76	\$0.00
	<i>(11 were approved)</i>		<i>(9 were issued tax credits; 1 expired; 1 did not incur minimum spend)</i>			
2011	22	20	20	\$2,341,054.48	\$1,572,174.49	\$0.00
	<i>(20 were approved; 2 were denied)</i>		<i>(18 were issued tax credits; 1 expired; 1 did not incur minimum spend)</i>			
2012	24	22	21	\$3,240,835.31	\$291,542.19	\$244,529.48
	<i>(21 were approved; 3 were denied)</i>		<i>(11 were issued tax credits; 1 expired; 9 still active)</i>			

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.

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 adhere to statutory confidentiality provisions of the West Virginia Code, 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 2008
(Supplement to January 19, 2010, Report)

While not statutorily required for this report, it should be recognized that the productions referenced in the table below utilized the services of 54 West Virginia businesses.

Statistical Item	Value
Number of Eligible Companies Claiming the Credit	1 <i>(for 2 separate projects)</i>
Dollar Amount of Tax Credit Certificates Issued to Taxpayers	\$46,191.97
Number of New Businesses Created by the Tax Credit	0
Number of New Jobs, If Any, Created by the Tax Credit	46 ¹
Amount of Direct Expenditures Made on Qualified Projects	\$153,971.85
Cost of the Credit	Disclosure of specific credit amounts is restricted by statute. However, the total aggregate credit claimed for Tax Years 2008 through 2012 (to date) is 16 credit claims totaling \$1,741.881.

¹ This calculation was determined from a review of the CPA expense verification report for each company issued a credit. Some jobs in the film industry are considered transient in nature and reflect work performed on a per project basis.

Table 2 – Statistical Data for Tax Year 2009

While not statutorily required for this report, it should be recognized that the productions referenced in the table below utilized the services of 209 West Virginia businesses.

Statistical Item	Value
Number of Eligible Companies Claiming the Credit	5 <i>(for 9 separate projects)</i>
Dollar Amount of Tax Credit Certificates Issued to Taxpayers	\$973,135.95
Number of New Businesses Created by the Tax Credit	6 ¹
Number of New Jobs, If Any, Created by the Tax Credit	106 ²
Amount of Direct Expenditures Made on Qualified Projects	\$3,349,946.94 ³
Cost of the Credit	Disclosure of specific credit amounts is restricted by statute. However, the total aggregate credit claimed for Tax Years 2008 through 2012 (to date) is 16 credit claims totaling \$1,741,881.

¹ This calculation was determined from a review of the requisite documentation each company must include with its tax credit voucher application, which sometimes identifies new companies that registered to do business with the WV Secretary of State's Office and the WV Tax Department. Some "new" companies register for only the timeframe necessary to serve a Program participant's production and later withdraw. Others remain active and in good standing, even though they are headquartered in other states, because they regularly provide services to Program participants. The Film Office has not verified which companies, if any, have withdrawn from doing business.

² This calculation was determined from a review of the CPA expense verification report for each company issued a credit. Some jobs in the film industry are considered transient in nature and reflect work performed on a per project basis.

³ Since one (1) production is still active, the final amount of tax credits issued will be supplemented in the next report.

Table 3 – Statistical Data for Tax Year 2010

While not statutorily required for this report, it should be recognized that the productions referenced in the table below utilized the services of 583 West Virginia businesses.

Statistical Item	Value
Number of Eligible Companies Claiming the Credit	3 <i>(for 6 separate projects)</i>
Dollar Amount of Tax Credit Certificates Issued to Taxpayers	\$4,868,928.76
Number of New Businesses Created by the Tax Credit	25 ¹
Number of New Jobs, If Any, Created by the Tax Credit	825 ²
Amount of Direct Expenditures Made on Qualified Projects	\$15,689,635.17 ³
Cost of the Credit	Disclosure of specific credit amounts is restricted by statute. However, the total aggregate credit claimed for Tax Years 2008 through 2012 (to date) is 16 credit claims totaling \$1,741,881.

¹ This calculation was determined from a review of the requisite documentation each company must include with its tax credit voucher application, which sometimes identifies new companies that registered to do business with the WV Secretary of State's Office and the WV Tax Department. Some "new" companies register for only the timeframe necessary to serve a Program participant's production and later withdraw. Others remain active and in good standing, even though they are headquartered in other states, because they regularly provide services to Program participants. The Film Office has not verified which companies, if any, have withdrawn from doing business.

² This calculation was determined from a review of the CPA expense verification report for each company issued a credit. Some jobs in the film industry are considered transient in nature and reflect work performed on a per project basis.

Table 4 – Statistical Data for Tax Year 2011 (Preliminary)

Statistical Item	Value
Number of Eligible Companies Claiming the Credit	6 <i>(for 15 separate projects)</i>
Dollar Amount of Tax Credit Certificates Issued to Taxpayers	\$1,572,174.49
Number of New Businesses Created by the Tax Credit	Complete data not yet available
Number of New Jobs, If Any, Created by the Tax Credit	Complete data not yet available
Amount of Direct Expenditures Made on Qualified Projects	Complete data not yet available
Cost of the Credit	Complete data not yet available

Table 5 – Statistical Data for Tax Year 2012 (Preliminary)

Statistical Item	Value
Number of Eligible Companies Claiming the Credit	5 <i>(for 16 separate projects)</i>
Dollar Amount of Tax Credit Certificates Issued to Taxpayers	\$291,542.19
Number of New Businesses Created by the Tax Credit	Complete data not yet available
Number of New Jobs, If Any, Created by the Tax Credit	Complete data not yet available
Amount of Direct Expenditures Made on Qualified Projects	Complete data not yet available
Cost of the Credit	Complete data not yet available

CONCLUSION

The data provided in this report is based upon applications reviewed by the Film Credit Development Committee for Tax Years 2009-2010 and also includes a supplement to Tax Year 2008. While not required at this time, preliminary data for Tax Years 2011-2012 is provided to demonstrate the growth of the Program. When the next report is prepared, various statistics and values for several Tax Years will likely be altered because (a) some projects are still active and have yet to submit Expense Verification Reports and (b) amended tax returns and credit applications could cause variances.

As illustrated throughout this report, the West Virginia Film Industry Investment Act continues to mature. Following various improvements to the statute in Tax Years 2008 and 2009, the Program has become more effective and competitive with other states, is showing a consistent increase in participation, and is having a positive impact on job growth and overall economic impact for West Virginia.

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