

State of Arizona
Senate
Forty-ninth Legislature
Second Regular Session
2010

SENATE BILL 1409

AN ACT

REPEALING SECTIONS 43-1075 AND 43-1163, ARIZONA REVISED STATUTES; AMENDING TITLE 43, CHAPTER 10, ARTICLE 5, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 43-1075; AMENDING SECTION 43-1075.01, ARIZONA REVISED STATUTES; AMENDING TITLE 43, CHAPTER 11, ARTICLE 6, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 43-1163; AMENDING SECTION 43-1163.01, ARIZONA REVISED STATUTES; RELATING TO MOTION PICTURE PRODUCTION INCOME TAX INCENTIVES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Repeal

3 Sections 43-1075 and 43-1163, Arizona Revised Statutes, is repealed.

4 Sec. 2. Title 43, chapter 10, article 5, Arizona Revised Statutes, is
5 amended by adding a new section 43-1075, to read:

6 43-1075. Credit for qualified production expenditures in
7 Arizona for motion picture production costs;
8 definitions

9 A. FOR TAXABLE YEARS BEGINNING FROM AND AFTER DECEMBER 31, 2010, A
10 CREDIT IS ALLOWED AGAINST THE TAXES IMPOSED BY THIS TITLE FOR QUALIFIED
11 PRODUCTION EXPENDITURES IN THIS STATE. A PRODUCTION COMPANY MAY ONLY RECEIVE
12 A CREDIT THAT IS BASED ON THE QUALIFIED PRODUCTION EXPENDITURES SUBMITTED BY
13 A QUALIFIED PRODUCTION COMPANY AND CERTIFIED BY THE DEPARTMENT.

14 B. TO QUALIFY FOR A CREDIT UNDER THIS SECTION, A PRODUCTION COMPANY
15 MUST:

16 1. HAVE QUALIFIED PRODUCTION EXPENDITURES OF AT LEAST TWO HUNDRED
17 FIFTY THOUSAND DOLLARS.

18 2. NOT INCLUDE PROPERTY WITH RESPECT TO WHICH RECORDS ARE REQUIRED TO
19 BE MAINTAINED UNDER 18 UNITED STATES CODE SECTION 2257.

20 3. EMPLOY, EITHER DIRECTLY OR THROUGH ITS AUTHORIZED PAYROLL SERVICE
21 COMPANY, RESIDENTS OF THIS STATE FOR AT LEAST TWENTY-FIVE PER CENT OF ITS
22 FULL-TIME EMPLOYMENT POSITIONS IN THIS STATE.

23 4. AT ITS EXPENSE, ENTER INTO A LIMITED MANAGED AUDIT AGREEMENT
24 PURSUANT TO TITLE 42, CHAPTER 2, ARTICLE 7 THAT INCLUDES AN AUDIT OF ITS
25 PRODUCTION COSTS AND OTHER REQUIREMENTS PRESCRIBED BY THIS SECTION TO CONFIRM
26 THE AMOUNT OF ANY CREDIT UNDER THIS SECTION. THE AUDIT MUST BE CONDUCTED BY
27 THE TAXPAYER'S AUTHORIZED REPRESENTATIVE, AS DEFINED IN SECTION 42-2301, WHO
28 IS AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT LICENSED IN THIS STATE. THE
29 CERTIFIED PUBLIC ACCOUNTANT AND THE FIRM THE CERTIFIED PUBLIC ACCOUNTANT IS
30 AFFILIATED WITH SHALL NOT REGULARLY PERFORM SERVICES FOR THE PRODUCTION
31 COMPANY OR ITS AFFILIATES. IF THE DIRECTOR ACCEPTS THE FINDINGS OF THE AUDIT
32 AND ISSUES A NOTICE OF DETERMINATION PURSUANT TO SECTION 42-2303 AND THE
33 TAXPAYER TIMELY FILES ITS INCOME TAX RETURN WITH THE APPROPRIATE CREDIT CLAIM
34 FORMS, THE CREDIT AMOUNT ACCEPTED IS NOT SUBJECT TO RECAPTURE, DISALLOWANCE,
35 REDUCTION OR DENIAL WITH RESPECT TO THE PRODUCTION COMPANY. THE DIRECTOR'S
36 NOTICE OF DETERMINATION SHALL INCLUDE A WRITTEN CERTIFICATE TO THE TAXPAYER
37 STATING THE AMOUNT OF THE CREDIT AND THAT THE CREDIT IS NOT SUBJECT TO
38 RECAPTURE. THIS PARAGRAPH DOES NOT PROHIBIT THE RECAPTURE OF A CREDIT FROM A
39 PRODUCTION COMPANY IF THE COMPANY FAILED TO DISCLOSE MATERIAL INFORMATION
40 DURING THE AUDIT OR FALSIFIED ITS BOOKS OR RECORDS OR OTHERWISE ENGAGED IN AN
41 ACTION THAT PREVENTED AN ACCURATE AUDIT.

42 C. THE AMOUNT OF THE CREDIT WITH RESPECT TO ANY INDIVIDUAL PRODUCTION
43 IS:

1 1. SEVENTEEN AND ONE-HALF PER CENT OF QUALIFIED PRODUCTION
2 EXPENDITURES OF AT LEAST TWO HUNDRED FIFTY THOUSAND DOLLARS, BUT NOT MORE
3 THAN ONE MILLION DOLLARS.

4 2. TWENTY PER CENT OF QUALIFIED PRODUCTION EXPENDITURES EXCEEDING ONE
5 MILLION DOLLARS.

6 3. AN ADDITIONAL FIVE PER CENT OF QUALIFIED PRODUCTION EXPENDITURES IF
7 THE PRODUCTION COMPANY USES A PRIVATELY FUNDED PRODUCTION FACILITY HAVING A
8 CERTIFIED INFRASTRUCTURE INVESTMENT OF AT LEAST FIFTY MILLION DOLLARS AT THE
9 TIME OF APPLICATION TO THE DEPARTMENT FOR AT LEAST FIFTY PER CENT OF THE
10 PRODUCTION.

11 D. WITHIN THIRTY DAYS AFTER SUBMITTAL OF THE APPLICATION, THE
12 DEPARTMENT SHALL CERTIFY THE VALUE OF THE INFRASTRUCTURE INVESTMENT OF A
13 PRIVATELY FUNDED PRODUCTION FACILITY BASED ON DOCUMENTATION SUBMITTED WITH
14 THE APPLICATION. THE PRIVATELY FUNDED PRODUCTION FACILITY SHALL ENTER INTO A
15 LIMITED MANAGE AUDIT AGREEMENT PURSUANT TO TITLE 42, CHAPTER 2, ARTICLE 7
16 THAT INCLUDES AN AUDIT OF ITS INFRASTRUCTURE INVESTMENT. THE AUDIT MUST BE
17 CONDUCTED BY THE TAXPAYER'S AUTHORIZED REPRESENTATIVE, AS DEFINED IN SECTION
18 42-2301, WHO IS AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT LICENSED IN THIS
19 STATE. THE CERTIFIED PUBLIC ACCOUNTANT AND THE FIRM THE CERTIFIED PUBLIC
20 ACCOUNTANT IS AFFILIATED WITH SHALL NOT REGULARLY PERFORM SERVICES FOR THE
21 PRIVATELY FUNDED PRODUCTION FACILITY OR ITS AFFILIATES. IF THE DIRECTOR
22 ACCEPTS THE FINDINGS OF THE AUDIT AND ISSUES A CERTIFICATION OF
23 INFRASTRUCTURE INVESTMENT VALUE THAT AMOUNT ACCEPTED IS NOT SUBJECT TO
24 FURTHER REVIEW. THE DIRECTOR SHALL PROVIDE A WRITTEN CERTIFICATE STATING THE
25 AMOUNT OF THE INFRASTRUCTURE INVESTMENT. A PRIVATELY FUNDED PRODUCTION
26 FACILITY MAY REQUEST CERTIFICATION OF ITS INFRASTRUCTURE INVESTMENT AT ANY
27 TIME ON OR BEFORE DECEMBER 31, 2015.

28 E. THE DEPARTMENT SHALL NOT ALLOW A CREDIT UNDER THIS SECTION TO A
29 TAXPAYER WHO HAS A DELINQUENT TAX BALANCE OWING TO THE DEPARTMENT UNDER THIS
30 TITLE OR TITLE 42.

31 F. THE AMOUNT OF THE CREDIT SHALL NOT EXCEED FIFTEEN MILLION DOLLARS
32 FOR ANY INDIVIDUAL PRODUCTION BY A QUALIFIED PRODUCTION COMPANY.

33 G. THE DEPARTMENT SHALL NOT PREAPPROVE INCOME TAX CREDITS FOR THE
34 PURPOSES OF THIS SECTION AND SECTION 43-1163 THAT EXCEED A TOTAL OF SEVENTY
35 MILLION DOLLARS FOR A SINGLE YEAR, EXCEPT THAT OF THE AMOUNT:

36 1. TEN MILLION DOLLARS EACH YEAR IS RESERVED FOR THE PURPOSES OF
37 INFRASTRUCTURE CREDITS PURSUANT TO SECTIONS 43-1075.01 AND 43-1163.01.

38 2. FOUR MILLION DOLLARS IS RESERVED FOR THE PURPOSES OF COMMERCIAL
39 ADVERTISEMENTS AND MUSIC VIDEO PRODUCTION PURSUANT TO SUBSECTION H OF THIS
40 SECTION AND SECTION 43-1163, SUBSECTION H.

41 H. THE FOLLOWING PROVISIONS APPLY WITH RESPECT TO COMMERCIAL
42 ADVERTISEMENT AND MUSIC VIDEO PRODUCTION:

43 1. A COMMERCIAL ADVERTISEMENT OR MUSIC VIDEO PRODUCTION COMPANY MAY
44 APPLY FOR QUALIFICATION UNDER THIS SECTION BEFORE THE COMPANY REACHES THE
45 MINIMUM EXPENDITURE THRESHOLD REQUIREMENTS OF SUBSECTION B OF THIS SECTION.

1 2. IN LIEU OF A SCRIPT, THE APPLICANT MUST SUBMIT A SYNOPSIS OR
2 STORYBOARD THAT:

3 (a) IDENTIFIES THE PRODUCT, SERVICE, PERSON OR EVENT FOR A COMMERCIAL
4 ADVERTISEMENT OR THE ARTIST AND SONG FOR A MUSIC VIDEO.

5 (b) DESCRIBES THE GENERAL CONTENT OR MESSAGE TO BE CONVEYED.

6 (c) DESCRIBES THE LOCATION OR LOCATIONS.

7 (d) DESCRIBES THE SETS.

8 (e) DESCRIBES THE INTENDED DISTRIBUTION OR MEDIUM AND SPECIFIC
9 CHANNELS, IF KNOWN.

10 3. THE DEPARTMENT MUST REVIEW THE COMPLETED APPLICATION WITHIN FIFTEEN
11 BUSINESS DAYS.

12 4. EXPENSES INCURRED BEFORE THE DATE OF SUBMISSION OF A COMPLETED
13 APPLICATION DO NOT QUALIFY AS PRODUCTION COSTS.

14 5. THE DEPARTMENT SHALL ALLOCATE THE INCOME TAX CREDIT INCENTIVES
15 BASED ON PRIORITY PLACEMENT ESTABLISHED BY THE DATE THAT THE COMPANY FILES
16 ITS APPLICATION AND BASED ON THE PERCENTAGE OF ESTIMATED TOTAL EXPENDITURES
17 IN THIS STATE ALLOWED AS A CREDIT UNDER THIS SECTION OR SECTION 43-1163.

18 6. WITHIN SIXTY DAYS AFTER APPLYING WITH THE DEPARTMENT UNDER
19 SUBSECTION ___ OF THIS SECTION, A COMPANY THAT IS PREAPPROVED FOR A SPECIFIC
20 PRODUCTION MUST NOTIFY AND PROVIDE DOCUMENTATION OF EXPENDITURES TO THE
21 DEPARTMENT OF THE TOTAL AMOUNT OF ELIGIBLE PRODUCTION COSTS ASSOCIATED WITH
22 THE PRODUCTION.

23 7. THE COMPANY IS NOT ELIGIBLE FOR A CREDIT UNTIL THE COMPANY'S
24 ELIGIBLE PRODUCTION EXPENDITURES REACH TWO HUNDRED FIFTY THOUSAND DOLLARS IN
25 A PERIOD OF TWELVE CONSECUTIVE MONTHS. WHEN THE COMPANY REACHES THAT
26 THRESHOLD, THE COMPANY MAY APPLY TO THE DEPARTMENT FOR APPROVAL OF THE CREDIT
27 PURSUANT TO SUBSECTION ___ OF THIS SECTION. APPLICATIONS FOR APPROVAL OF
28 CREDITS MAY NOT BE SUBMITTED BY THE SAME COMPANY MORE FREQUENTLY THAN ONCE A
29 CALENDAR MONTH.

30 8. NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, THE DEPARTMENT
31 SHALL ADOPT SEPARATE RULES AND PRESCRIBE FORMS AND PROCEDURES AS NECESSARY
32 FOR THE PURPOSES OF THIS SUBSECTION.

33 I. THE DEPARTMENT SHALL DENY AN APPLICATION SUBMITTED ON COMPLETION OF
34 A PRODUCTION IF IT DETERMINES THAT:

35 1. THE PRODUCTION WOULD CONSTITUTE AN OBSCENE MOTION PICTURE FILM OR
36 OBSCENE PICTORIAL PUBLICATION UNDER TITLE 12, CHAPTER 7, ARTICLE 1.1.

37 2. THE PRODUCTION DEPICTS SEXUAL ACTIVITY AS DEFINED IN TITLE 13,
38 CHAPTER 35.

39 3. THE PRODUCTION WOULD CONSTITUTE SEXUAL EXPLOITATION OF A MINOR OR
40 COMMERCIAL SEXUAL EXPLOITATION OF A MINOR UNDER TITLE 13, CHAPTER 35.1.

41 J. CO-OWNERS OF A MOTION PICTURE PRODUCTION COMPANY, INCLUDING
42 PARTNERS IN A PARTNERSHIP, MEMBERS OF A LIMITED LIABILITY COMPANY AND
43 SHAREHOLDERS OF AN S CORPORATION AS DEFINED IN SECTION 1361 OF THE INTERNAL
44 REVENUE CODE, MAY ALLOCATE THE CREDIT ALLOWED UNDER THIS SECTION AMONG THE
45 CO-OWNERS ON ANY BASIS WITHOUT REGARD TO THEIR PROPORTIONAL OWNERSHIP

1 INTEREST. THE TOTAL OF THE CREDITS ALLOWED ALL SUCH OWNERS OF THE MOTION
2 PICTURE PRODUCTION COMPANY MAY NOT EXCEED THE AMOUNT THAT WOULD HAVE BEEN
3 ALLOWED FOR A SOLE OWNER OF THE COMPANY.

4 K. IF THE ALLOWABLE TAX CREDIT FOR A TAXPAYER EXCEEDS THE TAXES
5 OTHERWISE DUE UNDER THIS TITLE ON THE CLAIMANT'S INCOME, OR IF THERE ARE NO
6 STATE INCOME TAXES DUE ON THE CLAIMANT'S INCOME, THE AMOUNT OF THE CLAIM NOT
7 USED AS AN OFFSET AGAINST INCOME TAXES SHALL BE PAID TO THE TAXPAYER IN THE
8 SAME MANNER AS A REFUND UNDER SECTION 42-1118. REFUNDS MADE PURSUANT TO THIS
9 SUBSECTION ARE SUBJECT TO SETOFF UNDER SECTION 42-1122.

10 L. THE DEPARTMENT OF REVENUE SHALL MAINTAIN ANNUAL DATA AND OTHER
11 INFORMATION ON THE TOTAL AMOUNT OF MONIES CREDITED PURSUANT TO THIS SECTION.

12 M. A CERTIFIED PRIVATELY FUNDED PRODUCTION FACILITY SHALL MAINTAIN
13 DATA ON THE NUMBER OF PRODUCTIONS USING ITS FACILITY EACH YEAR AND REPORT
14 THAT INFORMATION TO THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND THE
15 PRESIDENT OF THE SENATE ON OR BEFORE DECEMBER 31 EACH YEAR.

16 N. A TAXPAYER WHO CLAIMS A CREDIT FOR MOTION PICTURE PRODUCTION
17 EXPENDITURES UNDER THIS SECTION SHALL NOT CLAIM A CREDIT UNDER SECTION
18 43-1075.01 FOR THE SAME COSTS.

19 O. THE CREDIT ALLOWED BY THIS SECTION IS IN LIEU OF ANY ALLOWANCE FOR
20 STATE TAX PURPOSES OF A DEDUCTION OF THOSE EXPENSES ALLOWED BY THE INTERNAL
21 REVENUE CODE.

22 P. IF THE DEPARTMENT DETERMINES THAT A CREDIT REFUNDED PURSUANT TO
23 THIS SECTION IS INCORRECT OR INVALID, THE EXCESS CREDIT ISSUED MAY BE TREATED
24 AS A TAX DEFICIENCY PURSUANT TO SECTION 42-1108.

25 Q. FOR THE PURPOSES OF THIS SECTION:

26 1. "INFRASTRUCTURE INVESTMENT" MEANS EXPENDITURES FOR SOUNDSTAGES AND
27 SUPPORT AND AUGMENTATION FACILITIES THAT ARE CONSTRUCTED IN THIS STATE AND
28 PRIMARILY USED BY A PRODUCTION COMPANY BUT DOES NOT INCLUDE MOTION PICTURE
29 THEATERS AND OTHER COMMERCIAL EXHIBITION FACILITIES.

30 2. "PRIVATELY FUNDED PRODUCTION FACILITY" MEANS A PERMANENT FACILITY
31 IN THIS STATE OF ONE OR MORE SETS OR STAGES USED PRIMARILY:

32 (a) BY ANY PRODUCTION COMPANY OR COMPANIES AND ANY LAND, PERMANENT
33 BUILDINGS AND CAPITAL EQUIPMENT THAT IS IN OR ADJACENT TO, AND IS NECESSARY
34 FOR THE OPERATION OF THE FACILITY, INCLUDING PERMANENT FACILITIES USED TO
35 COMPLEMENT PRODUCTION NEEDS.

36 (b) FOR STAGING AND FILMING BY A PRODUCTION COMPANY AND ANY LAND,
37 PERMANENT BUILDINGS OR CAPITAL EQUIPMENT THAT IS IN OR ADJACENT TO, AND IS
38 NECESSARY FOR THE OPERATION OF THE FACILITY, INCLUDING PERMANENT FACILITIES
39 USED TO COMPLEMENT MOTION PICTURE PRODUCTION NEEDS AND COMPLEMENT THE MOTION
40 PICTURE PRODUCTION.

41 3. "PRODUCTION COMPANY" MEANS ANY PERSON PRIMARILY ENGAGED IN THE
42 BUSINESS OF PRODUCING ENTERTAINMENT CONTENT CREATED IN WHOLE OR IN PART
43 WITHIN THE STATE, INCLUDING MOTION PICTURES, DOCUMENTARIES, LONG-FORM
44 PRODUCTIONS, SPECIALS, SERIES, MINISERIES, SOUND RECORDINGS, VIDEOS AND MUSIC
45 VIDEOS AND INTERSTITIALS, TELEVISION PROGRAMMING, INTERACTIVE TELEVISION,

1 INTERACTIVE GAMES, VIDEOGAMES, COMMERCIALS, INFOMERCIALS, ANY FORMAT OF
2 DIGITAL MEDIA, INCLUDING AN INTERACTIVE WEBSITE, CREATED FOR DISTRIBUTION OR
3 EXHIBITION TO THE GENERAL PUBLIC, AND ANY TRAILER, PILOT, VIDEO TEASER OR
4 DEMO CREATED PRIMARILY TO STIMULATE THE SALE, MARKETING, PROMOTION OR
5 EXPLOITATION OF FUTURE INVESTMENT IN EITHER A PRODUCT OR A QUALIFIED
6 PRODUCTION BY ANY MEANS AND MEDIA IN ANY DIGITAL MEDIA FORMAT, FILM OR
7 VIDEOTAPE. PRODUCTION COMPANY DOES NOT INCLUDE ANY ONGOING TELEVISION
8 PROGRAM CREATED PRIMARILY AS NEWS, WEATHER OR FINANCIAL MARKET REPORTS, A
9 PRODUCTION FEATURING CURRENT EVENTS, SPORTING EVENTS AND AWARDS SHOW OR OTHER
10 GALA EVENT, A PRODUCTION WHOSE SOLE PURPOSE IS FUNDRAISING, A LONG-FORM
11 PRODUCTION THAT PRIMARILY MARKETS A PRODUCT OR SERVICE, A PRODUCTION USED FOR
12 CORPORATE TRAINING OR IN-HOUSE CORPORATE ADVERTISING OR OTHER SIMILAR
13 PRODUCTIONS FOR WHICH RECORDS ARE REQUIRED TO BE MAINTAINED UNDER 18 UNITED
14 STATES CODE SECTION 2257.

15 4. "QUALIFIED PRODUCTION EXPENDITURE" MEANS THE FOLLOWING EXPENDITURES
16 DIRECTLY RELATED TO A PRODUCTION BY A PRODUCTION COMPANY:

17 (a) THE WAGES PAID TO RESIDENTS OF THIS STATE FOR WORK PERFORMED IN
18 THIS STATE.

19 (b) MATERIAL PURCHASED FROM A VENDOR LOCATED IN THIS STATE FOR
20 CONSTRUCTION OF SETS, SPECIAL EFFECTS AND OTHER PURPOSES.

21 (c) EQUIPMENT RENTED OR LEASED FROM A VENDOR LOCATED IN THIS STATE.

22 (d) EQUIPMENT ACQUIRED OR OTHERWISE PURCHASED FROM A VENDOR LOCATED IN
23 THIS STATE.

24 (e) FACILITIES LEASED FROM A LESSEE LOCATED IN THIS STATE FOR
25 PREPRODUCTION, PRODUCTION AND POSTPRODUCTION IN ARIZONA.

26 (f) HOTEL AND LODGING IN THIS STATE.

27 (g) CATERING AND FOOD EXPENSES PURCHASED IN THIS STATE.

28 (h) LOCATION FEES IN THIS STATE.

29 (i) POST PRODUCTION EXPENSES IN THIS STATE.

30 (j) FUEL PURCHASED IN THIS STATE.

31 (k) VEHICLES RENTED IN THIS STATE.

32 5. "SOUNDSTAGE" MEANS A PERMANENT FACILITY IN THIS STATE OF ONE OR
33 MORE SETS OR STAGES USED PRIMARILY FOR STAGING AND FILMING BY A PRODUCTION
34 COMPANY AND ANY LAND, PERMANENT BUILDINGS OR CAPITAL EQUIPMENT THAT IS IN OR
35 ADJACENT TO, AND IS NECESSARY FOR THE OPERATION OF, A SOUNDSTAGE.

36 6. "SUPPORT AND AUGMENTATION FACILITIES" MEANS PERMANENT FACILITIES IN
37 THIS STATE THAT ARE USED TO COMPLEMENT PRODUCTION COMPANY NEEDS AND
38 COMPLEMENT THE PRODUCTION PROCESS.

39 Sec. 3. Section 43-1075.01, Arizona Revised Statutes, is amended to
40 read:

41 43-1075.01. Credit for motion picture infrastructure projects;
42 definition

43 A. A credit is allowed against the taxes imposed by this title for
44 investments in motion picture infrastructure projects in this state ~~as~~
45 ~~provided by section 41-1517.01~~. The amount of the credit is fifteen per cent

1 of the total base investment in the project during the taxable year as
2 approved and reported by the department ~~of commerce pursuant to section~~
3 ~~41-1517.01, subsection F~~ PURSUANT TO THIS SECTION. The taxpayer may apply
4 the credit against income taxes for the taxable year in which the motion
5 picture infrastructure project is completed ~~as provided by section~~
6 ~~41-1517.01, subsection F.~~

7 B. The department shall not allow:

8 1. Tax credits **IN A TOTAL AMOUNT EXCEEDING TEN MILLION DOLLARS** for any
9 taxable year under this section and section 43-1163.01 ~~that would violate the~~
10 ~~aggregate limits prescribed by section 41-1517.01, subsection C.~~

11 2. A tax credit under this section to a taxpayer who has a delinquent
12 tax balance owing to the department under this title or title 42.

13 C. An applicant, at its expense, may voluntarily enter into a limited
14 managed audit agreement pursuant to title 42, chapter 2, article 7 that
15 includes an audit of its base investment and other requirements prescribed ~~by~~
16 ~~section 41-1517.01 and~~ by this section to confirm the amount of any credit
17 under this section. The request to enter into the audit must be made after
18 the applicant receives approval for the credit ~~pursuant to section~~
19 ~~41-1517.01, subsection F.~~ The audit must be conducted by the applicant's
20 authorized representative, as defined in section 42-2301, who is an
21 independent certified public accountant licensed in this state. The
22 certified public accountant and the firm the certified public accountant is
23 affiliated with shall not regularly perform services for the taxpayer or its
24 affiliates. If the director accepts the findings of the audit and issues a
25 notice of determination pursuant to section 42-2303 and the taxpayer timely
26 files its income tax return with the appropriate credit claim forms, the
27 credit amount accepted is not subject to recapture, disallowance, reduction
28 or denial with respect to either the taxpayer or any subsequent transferee of
29 the credit, ~~and subsection F, paragraph 4 of this section does not apply.~~
30 The director's notice of determination shall include a written certificate to
31 the taxpayer stating the amount of the credit and that the credit is not
32 subject to recapture from a transferee. This subsection does not prevent the
33 recapture of a credit if the taxpayer failed to disclose material information
34 during the audit or falsified its books or records or otherwise engaged in an
35 action that prevented an accurate audit.

36 D. Co-owners of a business, including partners in a partnership,
37 members of a limited liability company and shareholders of an S corporation
38 as defined in section 1361 of the internal revenue code, may allocate the
39 credit allowed under this section among the co-owners on any basis without
40 regard to their proportional ownership interest. The total of the credits
41 allowed all such owners may not exceed the amount that would have been
42 allowed for a sole owner of the company.

43 E. If the allowable tax credit for a taxpayer exceeds the taxes
44 otherwise due under this title on the claimant's income, or if there are no
45 taxes due under this title, the taxpayer may carry the amount of the claim

1 not used to offset the taxes under this title forward for not more than five
2 consecutive taxable years' income tax liability.

3 ~~F. All or part of any unclaimed amount of credit under this section
4 may be sold or otherwise transferred under the following conditions:~~

5 ~~1. A single sale or transfer may involve one or more transferees, and
6 a transferee may in turn resell or transfer the credit subject to the same
7 conditions of this subsection.~~

8 ~~2. Both the transferor and transferee must submit a written notice of
9 the transfer to the department within thirty days after the sale or transfer.
10 The transferee's notice shall include a processing fee equal to one per cent
11 of the transferee's tax credit balance or two hundred dollars, whichever is
12 less. The notice shall include:~~

13 ~~(a) The name of the taxpayer.~~

14 ~~(b) The date of the transfer.~~

15 ~~(c) The amount of the transfer.~~

16 ~~(d) The transferor's tax credit balance before the transfer and the
17 remaining balance after the transfer.~~

18 ~~(e) All tax identification numbers for both transferor and transferee.~~

19 ~~(f) Any other information required by rule.~~

20 ~~3. A sale or transfer of the credit does not extend the time in which
21 the credit can be used. The carryforward period of time under subsection E
22 of this section for a credit that is sold or transferred begins on the date
23 the credit was originally earned.~~

24 ~~4. Except as provided by subsection C of this section, if a transferor
25 was not qualified or was disqualified from using the credit at the time of
26 the transfer, the department shall either disallow the credit claimed by a
27 transferee or recapture the credit from the transferee through any authorized
28 collection method. The transferee's recourse is against the transferor.~~

29 ~~5. In the case of any failure to comply with this subsection, the
30 department shall disallow the tax credit until the taxpayer is in full
31 compliance.~~

32 ~~G. F. The department of revenue shall maintain annual data on the
33 total amount of monies credited pursuant to this section, and shall provide
34 that data to the department of commerce on request.~~

35 ~~H. G. The department of revenue, with the cooperation of the
36 department of commerce, shall adopt rules and publish and prescribe forms and
37 procedures as necessary to effectuate the purposes of this section.~~

38 ~~I. H. A taxpayer who claims a credit for motion picture
39 infrastructure projects under this section shall not claim a credit under
40 section 43-1075 for the same costs.~~

41 ~~J. I. The credit allowed by this section is in lieu of any allowance
42 for state tax purposes of a deduction of those expenses allowed by the
43 internal revenue code.~~

1 ~~K.~~ J. For the purposes of this section, "motion picture
2 infrastructure project" ~~has the same meaning prescribed in section~~
3 ~~41-1517-01~~:

4 (a) MEANS SOUNDSTAGES AND SUPPORT AND AUGMENTATION FACILITIES THAT ARE
5 CONSTRUCTED IN THIS STATE AND PRIMARILY USED FOR MOTION PICTURE PRODUCTION.

6 (b) DOES NOT INCLUDE MOTION PICTURE THEATERS AND OTHER COMMERCIAL
7 EXHIBITION FACILITIES.

8 Sec. 4. Title 43, chapter 11, article 6, Arizona Revised Statutes, is
9 amended by adding a new section 43-1163, to read:

10 43-1163. Credit for qualified production expenditures in
11 Arizona for motion picture production costs;
12 definitions

13 A. FOR TAXABLE YEARS BEGINNING FROM AND AFTER DECEMBER 31, 2010, A
14 CREDIT IS ALLOWED AGAINST THE TAXES IMPOSED BY THIS TITLE FOR QUALIFIED
15 PRODUCTION EXPENDITURES IN THIS STATE. A PRODUCTION COMPANY MAY ONLY RECEIVE
16 A CREDIT THAT IS BASED ON THE QUALIFIED PRODUCTION EXPENDITURES SUBMITTED BY
17 A QUALIFIED PRODUCTION COMPANY AND CERTIFIED BY THE DEPARTMENT.

18 B. TO QUALIFY FOR A CREDIT UNDER THIS SECTION, A PRODUCTION COMPANY
19 MUST:

20 1. HAVE QUALIFIED PRODUCTION EXPENDITURES OF AT LEAST TWO HUNDRED
21 FIFTY THOUSAND DOLLARS.

22 2. NOT INCLUDE PROPERTY WITH RESPECT TO WHICH RECORDS ARE REQUIRED TO
23 BE MAINTAINED UNDER 18 UNITED STATES CODE SECTION 2257.

24 3. EMPLOY, EITHER DIRECTLY OR THROUGH ITS AUTHORIZED PAYROLL SERVICE
25 COMPANY, RESIDENTS OF THIS STATE FOR AT LEAST TWENTY-FIVE PER CENT OF ITS
26 FULL-TIME EMPLOYMENT POSITIONS IN THIS STATE.

27 4. AT ITS EXPENSE, ENTER INTO A LIMITED MANAGED AUDIT AGREEMENT
28 PURSUANT TO TITLE 42, CHAPTER 2, ARTICLE 7 THAT INCLUDES AN AUDIT OF ITS
29 PRODUCTION COSTS AND OTHER REQUIREMENTS PRESCRIBED BY THIS SECTION TO CONFIRM
30 THE AMOUNT OF ANY CREDIT UNDER THIS SECTION. THE AUDIT MUST BE CONDUCTED BY
31 THE TAXPAYER'S AUTHORIZED REPRESENTATIVE, AS DEFINED IN SECTION 42-2301, WHO
32 IS AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT LICENSED IN THIS STATE. THE
33 CERTIFIED PUBLIC ACCOUNTANT AND THE FIRM THE CERTIFIED PUBLIC ACCOUNTANT IS
34 AFFILIATED WITH SHALL NOT REGULARLY PERFORM SERVICES FOR THE PRODUCTION
35 COMPANY OR ITS AFFILIATES. IF THE DIRECTOR ACCEPTS THE FINDINGS OF THE AUDIT
36 AND ISSUES A NOTICE OF DETERMINATION PURSUANT TO SECTION 42-2303 AND THE
37 TAXPAYER TIMELY FILES ITS INCOME TAX RETURN WITH THE APPROPRIATE CREDIT CLAIM
38 FORMS, THE CREDIT AMOUNT ACCEPTED IS NOT SUBJECT TO RECAPTURE, DISALLOWANCE,
39 REDUCTION OR DENIAL WITH RESPECT TO THE PRODUCTION COMPANY. THE DIRECTOR'S
40 NOTICE OF DETERMINATION SHALL INCLUDE A WRITTEN CERTIFICATE TO THE TAXPAYER
41 STATING THE AMOUNT OF THE CREDIT AND THAT THE CREDIT IS NOT SUBJECT TO
42 RECAPTURE. THIS PARAGRAPH DOES NOT PROHIBIT THE RECAPTURE OF A CREDIT FROM A
43 PRODUCTION COMPANY IF THE COMPANY FAILED TO DISCLOSE MATERIAL INFORMATION
44 DURING THE AUDIT OR FALSIFIED ITS BOOKS OR RECORDS OR OTHERWISE ENGAGED IN AN
45 ACTION THAT PREVENTED AN ACCURATE AUDIT.

1 C. THE AMOUNT OF THE CREDIT WITH RESPECT TO ANY INDIVIDUAL PRODUCTION
2 IS:

3 1. SEVENTEEN AND ONE-HALF PER CENT OF QUALIFIED PRODUCTION
4 EXPENDITURES OF AT LEAST TWO HUNDRED FIFTY THOUSAND DOLLARS, BUT NOT MORE
5 THAN ONE MILLION DOLLARS.

6 2. TWENTY PER CENT OF QUALIFIED PRODUCTION EXPENDITURES EXCEEDING ONE
7 MILLION DOLLARS.

8 3. AN ADDITIONAL FIVE PER CENT OF QUALIFIED PRODUCTION EXPENDITURES IF
9 THE PRODUCTION COMPANY USES A PRIVATELY FUNDED PRODUCTION FACILITY HAVING A
10 CERTIFIED INFRASTRUCTURE INVESTMENT OF AT LEAST FIFTY MILLION DOLLARS AT THE
11 TIME OF APPLICATION TO THE DEPARTMENT FOR AT LEAST FIFTY PER CENT OF THE
12 PRODUCTION.

13 D. WITHIN THIRTY DAYS AFTER SUBMITTAL OF THE APPLICATION, THE
14 DEPARTMENT SHALL CERTIFY THE VALUE OF THE INFRASTRUCTURE INVESTMENT OF A
15 PRIVATELY FUNDED PRODUCTION FACILITY BASED ON DOCUMENTATION SUBMITTED WITH
16 THE APPLICATION. THE PRIVATELY FUNDED PRODUCTION FACILITY SHALL ENTER INTO A
17 LIMITED MANAGE AUDIT AGREEMENT PURSUANT TO TITLE 42, CHAPTER 2, ARTICLE 7
18 THAT INCLUDES AN AUDIT OF ITS INFRASTRUCTURE INVESTMENT. THE AUDIT MUST BE
19 CONDUCTED BY THE TAXPAYER'S AUTHORIZED REPRESENTATIVE, AS DEFINED IN SECTION
20 42-2301, WHO IS AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT LICENSED IN THIS
21 STATE. THE CERTIFIED PUBLIC ACCOUNTANT AND THE FIRM THE CERTIFIED PUBLIC
22 ACCOUNTANT IS AFFILIATED WITH SHALL NOT REGULARLY PERFORM SERVICES FOR THE
23 PRIVATELY FUNDED PRODUCTION FACILITY OR ITS AFFILIATES. IF THE DIRECTOR
24 ACCEPTS THE FINDINGS OF THE AUDIT AND ISSUES A CERTIFICATION OF
25 INFRASTRUCTURE INVESTMENT VALUE THAT AMOUNT ACCEPTED IS NOT SUBJECT TO
26 FURTHER REVIEW. THE DIRECTOR SHALL PROVIDE A WRITTEN CERTIFICATE STATING THE
27 AMOUNT OF THE INFRASTRUCTURE INVESTMENT. A PRIVATELY FUNDED PRODUCTION
28 FACILITY MAY REQUEST CERTIFICATION OF ITS INFRASTRUCTURE INVESTMENT AT ANY
29 TIME ON OR BEFORE DECEMBER 31, 2015.

30 E. THE DEPARTMENT SHALL NOT ALLOW A CREDIT UNDER THIS SECTION TO A
31 TAXPAYER WHO HAS A DELINQUENT TAX BALANCE OWING TO THE DEPARTMENT UNDER THIS
32 TITLE OR TITLE 42.

33 F. THE AMOUNT OF THE CREDIT SHALL NOT EXCEED FIFTEEN MILLION DOLLARS
34 FOR ANY INDIVIDUAL PRODUCTION BY A QUALIFIED PRODUCTION COMPANY.

35 G. THE DEPARTMENT SHALL NOT PREAPPROVE INCOME TAX CREDITS FOR THE
36 PURPOSES OF THIS SECTION AND SECTION 43-1075 THAT EXCEED A TOTAL OF SEVENTY
37 MILLION DOLLARS FOR A SINGLE YEAR, EXCEPT THAT OF THE AMOUNT:

38 1. TEN MILLION DOLLARS EACH YEAR IS RESERVED FOR THE PURPOSES OF
39 INFRASTRUCTURE CREDITS PURSUANT TO SECTIONS 43-1075.01 AND 43-1163.01.

40 2. FOUR MILLION DOLLARS IS RESERVED FOR THE PURPOSES OF COMMERCIAL
41 ADVERTISEMENTS AND MUSIC VIDEO PRODUCTION PURSUANT TO SUBSECTION H OF THIS
42 SECTION AND SECTION 43-1075, SUBSECTION H.

43 H. THE FOLLOWING PROVISIONS APPLY WITH RESPECT TO COMMERCIAL
44 ADVERTISEMENT AND MUSIC VIDEO PRODUCTION:

1 1. A COMMERCIAL ADVERTISEMENT OR MUSIC VIDEO PRODUCTION COMPANY MAY
2 APPLY FOR QUALIFICATION UNDER THIS SECTION BEFORE THE COMPANY REACHES THE
3 MINIMUM EXPENDITURE THRESHOLD REQUIREMENTS OF SUBSECTION B OF THIS SECTION.

4 2. IN LIEU OF A SCRIPT, THE APPLICANT MUST SUBMIT A SYNOPSIS OR
5 STORYBOARD THAT:

6 (a) IDENTIFIES THE PRODUCT, SERVICE, PERSON OR EVENT FOR A COMMERCIAL
7 ADVERTISEMENT OR THE ARTIST AND SONG FOR A MUSIC VIDEO.

8 (b) DESCRIBES THE GENERAL CONTENT OR MESSAGE TO BE CONVEYED.

9 (c) DESCRIBES THE LOCATION OR LOCATIONS.

10 (d) DESCRIBES THE SETS.

11 (e) DESCRIBES THE INTENDED DISTRIBUTION OR MEDIUM AND SPECIFIC
12 CHANNELS, IF KNOWN.

13 3. THE DEPARTMENT MUST REVIEW THE COMPLETED APPLICATION WITHIN FIFTEEN
14 BUSINESS DAYS.

15 4. EXPENSES INCURRED BEFORE THE DATE OF SUBMISSION OF A COMPLETED
16 APPLICATION DO NOT QUALIFY AS PRODUCTION COSTS.

17 5. THE DEPARTMENT SHALL ALLOCATE THE INCOME TAX CREDIT INCENTIVES
18 BASED ON PRIORITY PLACEMENT ESTABLISHED BY THE DATE THAT THE COMPANY FILES
19 ITS APPLICATION AND BASED ON THE PERCENTAGE OF ESTIMATED TOTAL EXPENDITURES
20 IN THIS STATE ALLOWED AS A CREDIT UNDER THIS SECTION OR SECTION 43-1075.

21 6. WITHIN SIXTY DAYS AFTER APPLYING WITH THE DEPARTMENT UNDER
22 SUBSECTION ___ OF THIS SECTION, A COMPANY THAT IS PREAPPROVED FOR A SPECIFIC
23 PRODUCTION MUST NOTIFY AND PROVIDE DOCUMENTATION OF EXPENDITURES TO THE
24 DEPARTMENT OF THE TOTAL AMOUNT OF ELIGIBLE PRODUCTION COSTS ASSOCIATED WITH
25 THE PRODUCTION.

26 7. THE COMPANY IS NOT ELIGIBLE FOR A CREDIT UNTIL THE COMPANY'S
27 ELIGIBLE PRODUCTION EXPENDITURES REACH TWO HUNDRED FIFTY THOUSAND DOLLARS IN
28 A PERIOD OF TWELVE CONSECUTIVE MONTHS. WHEN THE COMPANY REACHES THAT
29 THRESHOLD, THE COMPANY MAY APPLY TO THE DEPARTMENT FOR APPROVAL OF THE CREDIT
30 PURSUANT TO SUBSECTION ___ OF THIS SECTION. APPLICATIONS FOR APPROVAL OF
31 CREDITS MAY NOT BE SUBMITTED BY THE SAME COMPANY MORE FREQUENTLY THAN ONCE A
32 CALENDAR MONTH.

33 8. NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, THE DEPARTMENT
34 SHALL ADOPT SEPARATE RULES AND PRESCRIBE FORMS AND PROCEDURES AS NECESSARY
35 FOR THE PURPOSES OF THIS SUBSECTION.

36 I. THE DEPARTMENT SHALL DENY AN APPLICATION SUBMITTED ON COMPLETION OF
37 A PRODUCTION IF IT DETERMINES THAT:

38 1. THE PRODUCTION WOULD CONSTITUTE AN OBSCENE MOTION PICTURE FILM OR
39 OBSCENE PICTORIAL PUBLICATION UNDER TITLE 12, CHAPTER 7, ARTICLE 1.1.

40 2. THE PRODUCTION DEPICTS SEXUAL ACTIVITY AS DEFINED IN TITLE 13,
41 CHAPTER 35.

42 3. THE PRODUCTION WOULD CONSTITUTE SEXUAL EXPLOITATION OF A MINOR OR
43 COMMERCIAL SEXUAL EXPLOITATION OF A MINOR UNDER TITLE 13, CHAPTER 35.1.

44 J. CO-OWNERS OF A MOTION PICTURE PRODUCTION COMPANY, INCLUDING
45 CORPORATE PARTNERS IN A PARTNERSHIP, MAY ALLOCATE THE CREDIT ALLOWED UNDER

1 THIS SECTION AMONG THE CO-OWNERS ON ANY BASIS WITHOUT REGARD TO THEIR
2 PROPORTIONAL OWNERSHIP INTEREST. THE TOTAL OF THE CREDITS ALLOWED ALL SUCH
3 OWNERS OF THE MOTION PICTURE PRODUCTION COMPANY MAY NOT EXCEED THE AMOUNT
4 THAT WOULD HAVE BEEN ALLOWED FOR A SOLE OWNER OF THE COMPANY.

5 K. IF THE ALLOWABLE TAX CREDIT FOR A TAXPAYER EXCEEDS THE TAXES
6 OTHERWISE DUE UNDER THIS TITLE ON THE CLAIMANT'S INCOME, OR IF THERE ARE NO
7 STATE INCOME TAXES DUE ON THE CLAIMANT'S INCOME, THE AMOUNT OF THE CLAIM NOT
8 USED AS AN OFFSET AGAINST INCOME TAXES SHALL BE PAID TO THE TAXPAYER IN THE
9 SAME MANNER AS A REFUND UNDER SECTION 42-1118. REFUNDS MADE PURSUANT TO THIS
10 SUBSECTION ARE SUBJECT TO SETOFF UNDER SECTION 42-1122.

11 L. THE DEPARTMENT OF REVENUE SHALL MAINTAIN ANNUAL DATA AND OTHER
12 INFORMATION ON THE TOTAL AMOUNT OF MONIES CREDITED PURSUANT TO THIS SECTION.

13 M. A CERTIFIED PRIVATELY FUNDED PRODUCTION FACILITY SHALL MAINTAIN
14 DATA ON THE NUMBER OF PRODUCTIONS USING ITS FACILITY EACH YEAR AND REPORT
15 THAT INFORMATION TO THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND THE
16 PRESIDENT OF THE SENATE ON OR BEFORE DECEMBER 31 EACH YEAR.

17 N. A TAXPAYER WHO CLAIMS A CREDIT FOR MOTION PICTURE PRODUCTION
18 EXPENDITURES UNDER THIS SECTION SHALL NOT CLAIM A CREDIT UNDER SECTION
19 43-1163.01 FOR THE SAME COSTS.

20 O. THE CREDIT ALLOWED BY THIS SECTION IS IN LIEU OF ANY ALLOWANCE FOR
21 STATE TAX PURPOSES OF A DEDUCTION OF THOSE EXPENSES ALLOWED BY THE INTERNAL
22 REVENUE CODE.

23 P. IF THE DEPARTMENT DETERMINES THAT A CREDIT REFUNDED PURSUANT TO
24 THIS SECTION IS INCORRECT OR INVALID, THE EXCESS CREDIT ISSUED MAY BE TREATED
25 AS A TAX DEFICIENCY PURSUANT TO SECTION 42-1108.

26 Q. FOR THE PURPOSES OF THIS SECTION:

27 1. "INFRASTRUCTURE INVESTMENT" MEANS EXPENDITURES FOR SOUNDSTAGES AND
28 SUPPORT AND AUGMENTATION FACILITIES THAT ARE CONSTRUCTED IN THIS STATE AND
29 PRIMARILY USED BY A PRODUCTION COMPANY BUT DOES NOT INCLUDE MOTION PICTURE
30 THEATERS AND OTHER COMMERCIAL EXHIBITION FACILITIES.

31 2. "PRIVATELY FUNDED PRODUCTION FACILITY" MEANS A PERMANENT FACILITY
32 IN THIS STATE OF ONE OR MORE SETS OR STAGES USED PRIMARILY:

33 (a) BY ANY PRODUCTION COMPANY OR COMPANIES AND ANY LAND, PERMANENT
34 BUILDINGS AND CAPITAL EQUIPMENT THAT IS IN OR ADJACENT TO, AND IS NECESSARY
35 FOR THE OPERATION OF THE FACILITY, INCLUDING PERMANENT FACILITIES USED TO
36 COMPLEMENT PRODUCTION NEEDS.

37 (b) FOR STAGING AND FILMING BY A PRODUCTION COMPANY AND ANY LAND,
38 PERMANENT BUILDINGS OR CAPITAL EQUIPMENT THAT IS IN OR ADJACENT TO, AND IS
39 NECESSARY FOR THE OPERATION OF THE FACILITY, INCLUDING PERMANENT FACILITIES
40 USED TO COMPLEMENT MOTION PICTURE PRODUCTION NEEDS AND COMPLEMENT THE MOTION
41 PICTURE PRODUCTION.

42 3. "PRODUCTION COMPANY" MEANS ANY PERSON PRIMARILY ENGAGED IN THE
43 BUSINESS OF PRODUCING ENTERTAINMENT CONTENT CREATED IN WHOLE OR IN PART
44 WITHIN THE STATE, INCLUDING MOTION PICTURES, DOCUMENTARIES, LONG-FORM
45 PRODUCTIONS, SPECIALS, SERIES, MINISERIES, SOUND RECORDINGS, VIDEOS AND MUSIC

1 VIDEOS AND INTERSTITIALS, TELEVISION PROGRAMMING, INTERACTIVE TELEVISION,
2 INTERACTIVE GAMES, VIDEOGAMES, COMMERCIALS, INFOMERCIALS, ANY FORMAT OF
3 DIGITAL MEDIA, INCLUDING AN INTERACTIVE WEBSITE, CREATED FOR DISTRIBUTION OR
4 EXHIBITION TO THE GENERAL PUBLIC, AND ANY TRAILER, PILOT, VIDEO TEASER OR
5 DEMO CREATED PRIMARILY TO STIMULATE THE SALE, MARKETING, PROMOTION OR
6 EXPLOITATION OF FUTURE INVESTMENT IN EITHER A PRODUCT OR A QUALIFIED
7 PRODUCTION BY ANY MEANS AND MEDIA IN ANY DIGITAL MEDIA FORMAT, FILM OR
8 VIDEOTAPE. PRODUCTION COMPANY DOES NOT INCLUDE ANY ONGOING TELEVISION
9 PROGRAM CREATED PRIMARILY AS NEWS, WEATHER OR FINANCIAL MARKET REPORTS, A
10 PRODUCTION FEATURING CURRENT EVENTS, SPORTING EVENTS AND AWARDS SHOW OR OTHER
11 GALA EVENT, A PRODUCTION WHOSE SOLE PURPOSE IS FUNDRAISING, A LONG-FORM
12 PRODUCTION THAT PRIMARILY MARKETS A PRODUCT OR SERVICE, A PRODUCTION USED FOR
13 CORPORATE TRAINING OR IN-HOUSE CORPORATE ADVERTISING OR OTHER SIMILAR
14 PRODUCTIONS FOR WHICH RECORDS ARE REQUIRED TO BE MAINTAINED UNDER 18 UNITED
15 STATES CODE SECTION 2257.

16 4. "QUALIFIED PRODUCTION EXPENDITURE" MEANS THE FOLLOWING EXPENDITURES
17 DIRECTLY RELATED TO A PRODUCTION BY A PRODUCTION COMPANY:

18 (a) THE WAGES PAID TO RESIDENTS OF THIS STATE FOR WORK PERFORMED IN
19 THIS STATE.

20 (b) MATERIAL PURCHASED FROM A VENDOR LOCATED IN THIS STATE FOR
21 CONSTRUCTION OF SETS, SPECIAL EFFECTS AND OTHER PURPOSES.

22 (c) EQUIPMENT RENTED OR LEASED FROM A VENDOR LOCATED IN THIS STATE.

23 (d) EQUIPMENT ACQUIRED OR OTHERWISE PURCHASED FROM A VENDOR LOCATED IN
24 THIS STATE.

25 (e) FACILITIES LEASED FROM A LESSEE LOCATED IN THIS STATE FOR
26 PREPRODUCTION, PRODUCTION AND POSTPRODUCTION IN ARIZONA.

27 (f) HOTEL AND LODGING IN THIS STATE.

28 (g) CATERING AND FOOD EXPENSES PURCHASED IN THIS STATE.

29 (h) LOCATION FEES IN THIS STATE.

30 (i) POST PRODUCTION EXPENSES IN THIS STATE.

31 (j) FUEL PURCHASED IN THIS STATE.

32 (k) VEHICLES RENTED IN THIS STATE.

33 5. "SOUNDSTAGE" MEANS A PERMANENT FACILITY IN THIS STATE OF ONE OR
34 MORE SETS OR STAGES USED PRIMARILY FOR STAGING AND FILMING BY A PRODUCTION
35 COMPANY AND ANY LAND, PERMANENT BUILDINGS OR CAPITAL EQUIPMENT THAT IS IN OR
36 ADJACENT TO, AND IS NECESSARY FOR THE OPERATION OF, A SOUNDSTAGE.

37 6. "SUPPORT AND AUGMENTATION FACILITIES" MEANS PERMANENT FACILITIES IN
38 THIS STATE THAT ARE USED TO COMPLEMENT PRODUCTION COMPANY NEEDS AND
39 COMPLEMENT THE PRODUCTION PROCESS.

40 Sec. 5. Section 43-1163.01, Arizona Revised Statutes, is amended to
41 read:

42 43-1163.01. Credit for motion picture infrastructure projects;
43 definition

44 A. A credit is allowed against the taxes imposed by this title for
45 investments in motion picture infrastructure projects in this state ~~as~~

1 ~~provided by section 41-1517.01.~~ The amount of the credit is fifteen per cent
2 of the total base investment in the project during the taxable year as
3 approved and reported by the department ~~of commerce pursuant to section~~
4 ~~41-1517.01, subsection F~~ PURSUANT TO THIS SECTION. The taxpayer may apply
5 the credit against income taxes for the taxable year in which the motion
6 picture infrastructure project is completed ~~as provided by section~~
7 ~~41-1517.01, subsection F.~~

8 B. The department shall not allow:

9 1. Tax credits **IN A TOTAL AMOUNT EXCEEDING TEN MILLION DOLLARS** for any
10 taxable year under this section and section 43-1075.01 ~~that would violate the~~
11 ~~aggregate limits prescribed by section 41-1517.01, subsection C.~~

12 2. A tax credit under this section to a taxpayer that has a delinquent
13 tax balance owing to the department under this title or title 42.

14 C. An applicant, at its expense, may voluntarily enter into a limited
15 managed audit agreement pursuant to title 42, chapter 2, article 7 that
16 includes an audit of its base investment and other requirements prescribed ~~by~~
17 ~~section 41-1517.01 and~~ by this section to confirm the amount of any credit
18 under this section. The request to enter into the audit must be made after
19 the applicant receives approval for the credit ~~pursuant to section~~
20 ~~41-1517.01, subsection F.~~ The audit must be conducted by the applicant's
21 authorized representative, as defined in section 42-2301, who is an
22 independent certified public accountant licensed in this state. The
23 certified public accountant and the firm the certified public accountant is
24 affiliated with shall not regularly perform services for the taxpayer or its
25 affiliates. If the director accepts the findings of the audit and issues a
26 notice of determination pursuant to section 42-2303 and the taxpayer timely
27 files its income tax return with the appropriate credit claim forms, the
28 credit amount accepted is not subject to recapture, disallowance, reduction
29 or denial with respect to either the taxpayer or any subsequent transferee of
30 the credit, ~~and subsection F, paragraph 4 of this section does not apply.~~
31 The director's notice of determination shall include a written certificate to
32 the taxpayer stating the amount of the credit and that the credit is not
33 subject to recapture from a transferee. This subsection does not prevent the
34 recapture of a credit if the taxpayer failed to disclose material information
35 during the audit or falsified its books or records or otherwise engaged in an
36 action that prevented an accurate audit.

37 D. Co-owners of a business, including corporate partners in a
38 partnership and members of a limited liability company, may allocate the
39 credit allowed under this section among the co-owners on any basis without
40 regard to their proportional ownership interest. The total of the credits
41 allowed all such owners may not exceed the amount that would have been
42 allowed for a sole owner of the company.

43 E. If the allowable tax credit for a taxpayer exceeds the taxes
44 otherwise due under this title on the claimant's income, or if there are no
45 taxes due under this title, the taxpayer may carry the amount of the claim

1 not used to offset the taxes under this title forward for not more than five
2 consecutive taxable years' income tax liability.

3 ~~F. All or part of any unclaimed amount of credit under this section
4 may be sold or otherwise transferred under the following conditions:~~

5 ~~1. A single sale or transfer may involve one or more transferees, and
6 a transferee may in turn resell or transfer the credit subject to the same
7 conditions of this subsection.~~

8 ~~2. Both the transferor and transferee must submit a written notice of
9 the transfer to the department within thirty days after the sale or transfer.
10 The transferee's notice shall include a processing fee equal to one per cent
11 of the transferee's tax credit balance or two hundred dollars, whichever is
12 less. The notice shall include:~~

13 ~~(a) The name of the taxpayer.~~

14 ~~(b) The date of the transfer.~~

15 ~~(c) The amount of the transfer.~~

16 ~~(d) The transferor's tax credit balance before the transfer and the
17 remaining balance after the transfer.~~

18 ~~(e) All tax identification numbers for both transferor and transferee.~~

19 ~~(f) Any other information required by rule.~~

20 ~~3. A sale or transfer of the credit does not extend the time in which
21 the credit can be used. The carryforward period of time under subsection E
22 of this section for a credit that is sold or transferred begins on the date
23 the credit was originally earned.~~

24 ~~4. Except as provided by subsection C of this section, if a transferor
25 was not qualified or was disqualified from using the credit at the time of
26 the transfer, the department shall either disallow the credit claimed by a
27 transferee or recapture the credit from the transferee through any authorized
28 collection method. The transferee's recourse is against the transferor.~~

29 ~~5. In the case of any failure to comply with this subsection, the
30 department shall disallow the tax credit until the taxpayer is in full
31 compliance.~~

32 ~~G. F. The department of revenue shall maintain annual data on the
33 total amount of monies credited pursuant to this section, and shall provide
34 that data to the department of commerce on request.~~

35 ~~H. G. The department of revenue, with the cooperation of the
36 department of commerce, shall adopt rules and publish and prescribe forms and
37 procedures as necessary to effectuate the purposes of this section.~~

38 ~~I. H. A taxpayer that claims a credit for motion picture
39 infrastructure projects under this section shall not claim a credit under
40 section 43-1163 for the same costs.~~

41 ~~J. I. The credit allowed by this section is in lieu of any allowance
42 for state tax purposes of a deduction of those expenses allowed by the
43 internal revenue code.~~

1 ~~K.~~ J. For the purposes of this section, "motion picture
2 infrastructure project" ~~has the same meaning prescribed in section~~
3 ~~41-1517.01.:~~

4 (a) MEANS SOUNDSTAGES AND SUPPORT AND AUGMENTATION FACILITIES THAT ARE
5 CONSTRUCTED IN THIS STATE AND PRIMARILY USED FOR MOTION PICTURE PRODUCTION.

6 (b) DOES NOT INCLUDE MOTION PICTURE THEATERS AND OTHER COMMERCIAL
7 EXHIBITION FACILITIES.

8 Sec. 6. Effect on preexisting tax credits

9 This act does not affect the validity of income tax credits granted
10 under prior law. Taxpayers, including transferees, who qualified for credits
11 under sections 41-1517, 41-1517.01, 43-1075, 43-1075.01, 43-1163 and
12 43-1163.01, Arizona Revised Statutes, in effect before the effective date of
13 this act, may use any applicable amounts of those credits, including allowed
14 carryovers, against income tax liabilities for subsequent taxable years as
15 provided by law in effect before the effective date of this act.

16 Sec. 7. Purpose

17 Pursuant to section 43-223, Arizona Revised Statutes, the legislature
18 enacts sections 43-1075 and 43-1163, Arizona Revised Statutes, as added by
19 this act, to encourage development in this state of a strong capital and
20 infrastructure base for motion picture production and related activity to
21 achieve an independent, self-supporting industry. This objective is divided
22 into immediate and long-term objectives as follows:

23 1. Attract private investment for the production of motion pictures in
24 this state.

25 2. Develop a tax and capital infrastructure that encourages private
26 development but not requiring any company to use the infrastructure for
27 purposes of the tax incentives.

28 3. Develop a system using income tax credits to encourage investments
29 in a qualified production facilities.

30 4. Create high quality employment opportunities within this sector,
31 and increase this state's global competitiveness by fully using economic
32 development tools within the motion picture and digital media industry.

33 5. Encourage spin-off development such as educational programs to
34 provide a labor force trained in all aspects of film and digital production.

35 Sec. 8. Review of income tax credits

36 Notwithstanding section 43-222, Arizona Revised Statutes, in 2010 the
37 joint legislative income tax credit review committee shall not review the
38 income tax credits in sections 43-1075, 43-1075.01, 43-1163 and 43-1163.01,
39 Arizona Revised Statutes.

40 Sec. 9. Effective date

41 Sections 1, 2 and 3 of this act are effective and apply to taxable
42 years beginning from and after December 31, 2010.