LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION

April 25, 2021

TO: Honorable Morgan Meyer, Chair, House Committee on Ways & Means

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: **HB4392** by Price (Relating to tax credits against franchise tax and sales and use tax for the moving image industry in this state.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB4392, As Introduced : a negative impact of ($41,300,000) through the biennium ending August 31, 2023.

Additionally, the bill will have a direct impact of a revenue loss to the Property Tax Relief Fund of ($128,300,000) for the 2022-23 biennium. Any loss to the Property Tax Relief Fund must be made up with an equal amount of General Revenue to fund the Foundation School Program.

General Revenue-Related Funds, Five- Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to *General Revenue Related Funds*
2022	($32,200,000)
2023	($9,100,000)
2024	($9,500,000)
2025	($9,900,000)
2026	($10,300,000)

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue (Loss) from *General Revenue Fund* 1	Probable Revenue (Loss) from *Property Tax Relief Fund* 304
2022	($32,200,000)	($104,000,000)
2023	($9,100,000)	($24,300,000)
2024	($9,500,000)	($25,300,000)
2025	($9,900,000)	($26,300,000)
2026	($10,300,000)	($27,400,000)

Fiscal Analysis

The bill would amend Chapters 151 and 171, Tax Code to provide for sales and use tax credits and franchise tax credits for expenditures in the state related to film making.

Added Section 151.360 would provide that a person is entitled to credit against sales and use tax in an amount equal to 30 percent of in-state expenditures related to the making of a film

Added Section 171.701 would provide that a taxable entity is entitled to credit against franchise tax in an amount equal to 30 percent of in-state expenditures related to the making of a film.

The bill would take effect immediately upon enactment, assuming it received the requisite two-thirds majority votes in both houses of the Legislature. Otherwise, it would take effect September 1, 2021.

Methodology

The bill does not define “in-state expenditures related to the making of a film.” A similar term, “in-state spending,” as defined by Section 485.021(1), Government Code for purposes of the Moving Image Industry Incentive Program (MIIIP), limits such spending to that by a production company during the production and completion of a moving image project, including amounts paid in wages to Texas residents. However, the bill would not provide explicit statutory reference to that definition; it is not clear that the comptroller could by rule limit the proposed credits to amounts spent by production companies. Expenditures by any company or individual related to the making of any kind of film, including by companies and crew that sell goods and services to or are employed by a production company, could qualify. Expenditures for the making of films for private use and not for sale also might qualify.

It is not clear that the meaning of “film” could or should be limited to a film for theatrical release. Made-for-television films and those for digital streaming release would probably qualify. Enforcement of an administrative distinction between made-for-television films and television shows may not be tenable, without supporting statutory language. Commercials would arguably not qualify, nor would video recorded on a smart phone posted to a public website, but such matters would be contestable.

The bill would not limit a taxable entity to either sales tax credit or franchise tax credit. Consequently, an amount of credit equal to sixty percent of in-state expenditures could be granted, with half the credit amount applicable to each tax.

The bill would not exclude from credit in-state expenditures paid for with grant money from the Texas Film Commission. Consequently, up to sixty percent of the amounts of MIIIP grants awarded each year could result in tax credits when spent, depending on the portion of grants to projects that might qualify as films for purposes of the bill, regardless of how designated by the commission.

A substantial set of items used in film production are exempt from sales tax under Section 151.3185, including cameras, film and film developing chemicals, lights, props, sets, teleprompters, microphones, digital equipment, special effects equipment and supplies, audio or video routing switchers, and other equipment when used for the production of a motion picture, video, or audio master recording. For production companies, the credit amount of thirty percent of in-state expenditures including wages paid to residents would be expected to far exceed the 6.25 percent state sales tax payable on items not exempted under Section 151.3185, including equipment and supplies used in sales, transportation, or distribution activities, telecommunications equipment and services, transmission equipment, security services, motor vehicle parking services, and food ready for immediate consumption. The total amounts of state sales tax paid by film production companies would be subject to refund pursuant to credit claims, and amounts of sales tax paid by companies with multiple lines of business besides film production or by companies and crew who provide goods and services to production companies would be subject to refund up to the full amount of credit earned for film making-related expenditures.

For a film production company or a company that provides services to a production company in relation to the making of a film, considered on a separate entity basis, the credit amount of thirty percent of in-state expenditures would typically far exceed the company's franchise tax liability of only 0.75 of one percent of taxable margin. For such a company, franchise tax liability would be eliminated but most of the value of credit earned would go unused. However, franchise tax is not assessed on a separate entity basis, but on a combined group basis. Credits earned by film production companies and companies that provide services to production companies that are held in affiliated groups would be available for the reduction of the franchise tax liabilities of the combined groups. Consequently, a substantial portion of the credits are likely to be used.

The Comptroller's estimate of revenue loss is based on average annual in-state spending by production companies during the past ten years for MIIIP projects classed by the Texas Film Commission (TFC) as feature films or television, adjusted for assumed additional spending related to the making of films that would be by taxable entities and persons that are not production companies, additional expenditures that may qualify for credits for film projects that may not be MIIIP grant recipients, and reduced for the fraction of credits generated that would likely go unused as exceeding the sales tax and franchise tax liabilities of the persons and taxable entities receiving the credits.

If the bill's language were interpreted more broadly than assumed for purposes of this estimate, revenue losses would be substantially larger.

The bill does not limit application of the credits to sales taxes paid and franchise tax reports originally due on or after the effective date. In view of the standard four year statute of limitations provided by Section 111.201, Tax Code, this estimate assumes that refunds of sales and franchise taxes would be paid based on amended returns filed by eligible claimants with respect to credits for expenditures made and taxes paid during the four years preceding the effective date of the bill.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 304 Comptroller of Public Accounts

LBB Staff: JMc, KK, SD