



108th CONGRESS  
2d Session

**H. R. 4736**

To amend the Internal Revenue Code of 1986 to encourage the production of independent motion picture films in the United States.

**IN THE HOUSE OF REPRESENTATIVES**

**June 25, 2004**

Ms. MCCARTHY of Missouri (for herself, Mr. RANGEL, Mr. BURTON of Indiana, Ms. SLAUGHTER, Mr. DOGGETT, Mr. KUCINICH, Mr. SCHIFF, Mr. MCINTYRE, Mr. MCGOVERN, and Ms. MILLENDER-MCDONALD) introduced the following bill; which was referred to the Committee on Ways and Means

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**A BILL**

To amend the Internal Revenue Code of 1986 to encourage the production of independent motion picture films in the United States.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the 'Independent Film Small Business Job Creation Act of 2004'.

**SEC. 2. DEDUCTION FOR INDEPENDENT FILM PRODUCTION INVESTMENTS.**

(a) IN GENERAL- Part VI of subchapter B of chapter 1 of the Internal Revenue Code of 1986 (relating to itemized deduction for individuals and corporations) is amended by adding at the end the following new section:

**`SEC. 199. INDEPENDENT FILM PRODUCTION INVESTMENTS.**

`(a) ALLOWANCE OF DEDUCTION-

`(1) IN GENERAL- In the case of a taxpayer who holds a qualified investment during any portion of the taxable year, there shall be allowed as a deduction for the taxable year an amount equal to the applicable percentage of the qualified expenditures relating to such investments.

`(2) APPLICABLE PERCENTAGE- For purposes of paragraph (1), the applicable percentage shall be determined on the basis of the amount which bears the same ratio to the qualified expenditures made during the portion of the taxable year referred to in paragraph (1) as the amount of the taxpayer's qualified investment in the eligible independent film production entity bears to the aggregate qualified investment in such entity.

`(b) QUALIFIED EXPENDITURES- For purposes of this section--

`(1) IN GENERAL- The term `qualified expenditures' means amounts paid or incurred by an eligible independent film production entity for preproduction, production, and post-production of a qualified motion picture film.

`(2) POST PRODUCTION- The term `post-production' means, with respect to any motion picture film, distribution and promotion of such film.

`(3) DENIAL OF DOUBLE BENEFIT- Except as provided by subsection (a), qualified expenditures shall be disregarded in determining--

`(A) the adjusted basis of any property held at the entity level, and

`(B) any deduction allowed at the entity level or at the partner or similar level.

`(c) QUALIFIED INVESTMENT- For purposes of this section--

`(1) IN GENERAL- The term `qualified investment' means any equity investment in an eligible independent film production entity if--

`(A) such investment is acquired by the taxpayer at its original issue (directly or through an underwriter) solely in exchange for cash,

`(B) substantially all of such cash is used by the eligible independent film production entity for qualified expenditures, and

`(C) such investment is designated to be used for preproduction, production, and post-production of a qualified motion picture film by the eligible independent film production entity.

`(2) TREATMENT OF SUBSEQUENT PURCHASERS- The term `qualified investment' shall include any equity investment which would (but for paragraph (1)(A)) be a qualified investment in the hands of the taxpayer if such investment was a qualified investment in the hands of a prior holder.

`(3) REDEMPTIONS- A rule similar to the rule of section 1202(c)(3) shall apply for purposes of this subsection.

`(4) EQUITY INVESTMENT- The term `equity investment' means-

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` (A) any stock (other than nonqualified preferred stock as defined in section 351(g)(2)) in an entity which is a corporation, and

` (B) any capital interest in an entity which is a partnership.

`(d) ELIGIBLE INDEPENDENT FILM PRODUCTION ENTITY-

`(1) IN GENERAL- The term `eligible independent film production entity' means any domestic corporation or partnership (and any person related to such corporation or partnership)--

` (A) which is organized and operated for the primary purpose of producing a qualified motion picture film outside the formal studio structure, and

` (B) which takes such film into preproduction, production, and post production through financial funding of its own money or assets, private investors, financial institutions, guarantees, presale advances, or distribution contracts.

`(2) RELATED PERSON- For purposes of paragraph (1), a person is a related person to another person if--

` (A) the relationship between such persons would result in a disallowance of losses under section 267 or 707(b), or

` (B) such persons are members of the same controlled group of corporations (as defined in section 1563(a), except that `more than 50 percent' shall be substituted for `at least 80 percent' each place it appears therein).

`(3) RELEASE OF FILM NOT TAKEN INTO ACCOUNT- For purposes of paragraph (1), whether a motion picture film is released theatrically, directly to video cassette, DVD, or any other format, television or cable programming movie-of-the-week, miniseries, or pilot production shall not be taken into account.

`(e) QUALIFIED MOTION PICTURE FILM- For purposes of this section--

`(1) IN GENERAL- The term `qualified motion picture film' means a motion picture film--

` (A) the budget of which is greater than \$2,000,000 and less than \$20,000,000, and

` (B) not less than 95 percent of the wages or self-employment income paid or incurred for producing such film (including the preproduction, production, and post-production stages) is for services provided within the United States or any of its possessions.

`(2) EXCEPTION- The term `qualified motion picture film' shall not include any motion picture film which contains actual sexually explicit conduct (as defined by section 2257(h)(1) of title 18, United States Code.

`(3) BUDGET- The budget for a motion picture film--

`(A) shall not exceed the face amount of the aggregate completion bonds issued with respect to the motion picture film, and

`(B) shall include the preproduction, production, and post-production stages of producing such film.

`(4) WAGES; SELF-EMPLOYMENT INCOME-

`(A) WAGES- The term `wages' has the meaning given to such term by section 3121.

`(B) SELF-EMPLOYMENT INCOME- The term `self-employment income' has the meaning given to such term by section 1402.

`(5) INFLATION ADJUSTMENT- In the case of a taxable year after 2005, the dollar amounts contained in paragraph (1)(A) shall each be increased by an amount equal to--

`(A) such dollar amount, multiplied by

`(B) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting `calendar year 2004' for `calendar year 1992' in subparagraph (B) thereof.

Any increase under this subparagraph which is not a multiple of \$1,000 shall be rounded to the next lowest multiple of \$1,000.

`(f) RECAPTURE IN CERTAIN CASES-

`(1) IN GENERAL- If, at any time during the 5-year period beginning on the date of the original issue of a qualified investment in a eligible independent film production entity, there is a recapture event with respect to such investment, then the tax imposed by this chapter for the taxable year in which such event occurs shall be increased by the credit recapture amount.

`(2) RECAPTURE AMOUNT- For purposes of paragraph (1), the recapture amount is an amount equal to the sum of--

`(A) the aggregate decrease in the deductions allowed to the taxpayer under this chapter for all prior taxable years which would have resulted if no deduction had been determined under this section with respect to such investment, plus

`(B) interest at the underpayment rate established under section 6621 on the amount determined under subparagraph (A) for each prior taxable year for the period beginning on the due date for filing the return for the prior taxable year involved.

No deduction shall be allowed under this chapter for interest described in subparagraph (B).

`(3) RECAPTURE EVENT- For purposes of paragraph (1), there is a recapture event with respect to an equity investment in a eligible independent film production entity if--

`(A) such entity ceases to be a eligible independent film production entity,

`(B) the proceeds of the investment cease to be used as required of subsection (c)(1)(B), or

`(C) such investment is redeemed by such entity.

`(4) SPECIAL RULE- Any increase in tax under this subsection shall not be treated as a tax imposed by this chapter for purposes of section 55.

`(g) BASIS REDUCTION- The basis of any qualified investment shall be reduced by the amount of any deduction determined under this section with respect to such investment. This subsection shall not apply for purposes of sections 1202, 1400B, and 1400F.

`(h) ELECTION TO HAVE CREDIT NOT APPLY- A taxpayer may elect to have this section not apply for any taxable year.

`(i) REGULATIONS- The Secretary shall prescribe such regulations as may be appropriate to carry out this section, including regulations--

`(1) which prevent the abuse of the purposes of this section, and

`(2) which impose appropriate reporting requirements.'

(b) CONFORMING AMENDMENT- Subsection (a) of section 1016 of such Code is amended by striking `and' at the end of paragraph (27), by striking the period at the end of paragraph (28) and inserting `; and', and by adding at the end the following new paragraph:

`(29) to the extent provided in section 199(g).'

(c) CLERICAL AMENDMENT- The table of sections for part VI of subchapter B of chapter 1 of such Code is amended by adding at the end the following new item:

`Sec. 199. Independent film production investments.'

(d) EFFECTIVE DATE- The amendments made by this section shall apply to investments made after December 31, 2004.

*END*