

State of Minnesota  
HOUSE OF REPRESENTATIVES

EIGHTY-SEVENTH SESSION

H. F. No. 3048

05/08/2012 Authored by Hornstein

The bill was read for the first time and referred to the Committee on Jobs and Economic Development Finance

1.1 A bill for an act  
1.2 relating to taxation; income and franchise; establishing a live theater production  
1.3 partnership credit; appropriating money; proposing coding for new law in  
1.4 Minnesota Statutes, chapter 290.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. **[290.0682] LIVE THEATER PRODUCTION PARTNERSHIP CREDIT.**

1.7 Subdivision 1. **Credit allowed.** Subject to the conditions set forth in this section,  
1.8 an individual or a corporate taxpayer is allowed a credit against the tax due under this  
1.9 chapter, for each taxable year in which the applicant is issued an accredited theater  
1.10 production certificate, equal to: 25 percent of the total qualifying labor expenditures and  
1.11 production expenditures for a tier-one production, and 35 percent of the total qualifying  
1.12 labor expenditures and production expenditures for a tier-two production.

1.13 Subd. 2. **Definitions.** (a) "Accredited theater production" means a tier-one or  
1.14 tier-two production that is a for-profit live stage presentation in a qualified production  
1.15 facility, as defined in this section.

1.16 (b) "Accredited theater production certificate" means a certificate issued by the  
1.17 Department of Employment and Economic Development certifying that the production is  
1.18 an accredited theater production that meets the guidelines of this section.

1.19 (c) "Applicant" means a taxpayer that is a theater producer, owner, licensee,  
1.20 operator, or presenter that is presenting or has presented a live stage presentation located  
1.21 in the state who:

1.22 (1) owns or licenses the theatrical rights of the stage presentation for the production  
1.23 period, or has contracted or will contract directly with the owner or licensee of the

theatrical rights or a person acting on behalf of the owner or licensee to provide live performances of the production; and

(2) has entered into an agreement with a sponsor organization for the purposes of producing the accredited theater production.

(d) "Labor expenditure" means gross salary or wages, including, but not limited to, taxes, benefits, and any other consideration incurred or paid to nontalent employees of the applicant for services rendered to and on behalf of the accredited theater production. The expenditure must be:

(1) incurred or paid by the applicant on or after the effective date of this section for services related to any portion of an accredited theater production from its preproduction stages, including, but not limited to, the writing of the script, casting, hiring of service providers, purchases from vendors, marketing, advertising, public relations, load in, rehearsals, performances, other accredited theater production-related activities, and load out;

(2) paid to Minnesota residents in the taxable year for which the applicant is claiming the tax credit award, or no later than 60 days after the end of the taxable year; and

(3) limited to the first \$100,000 of wages incurred or paid to each employee of an accredited theater production in a taxable year.

(e) "Long-run production" means a live stage production that is performed in a qualified production facility for longer than eight weeks, with at least six performances per week.

(f) "New or expanding" means a live theater production company that, on December 31 of the year in which the applicant taxpayer files for surrender of its accredited theater production certificate and on the date of issuance of the accredited theater production certificate, has fewer than five employees in the state.

(g) "Pre-Broadway production" means a live stage production that, in its original or adaptive version, is performed in a qualified production facility having a presentation scheduled for Broadway's Theater District in New York City not longer than 12 months after the date of its last Minnesota presentation.

(h) "Production spending" means any and all expenses directly or indirectly incurred relating to an accredited theater production presented in any qualified production facility of the applicant, including, but not limited to, expenditures for:

(1) national marketing; public relations; and the creation and placement of print, electronic, television, billboard, and other forms of advertising; and

(2) the construction and fabrication of scenic materials and elements, provided that the maximum amount of expenditures attributable to the construction and fabrication of

scenic materials and elements eligible for a tax credit award shall not exceed \$500,000 per applicant per production in any taxable year.

(i) "Qualified production facility" means a facility located in the state in which live theatrical productions are, or are intended to be, exclusively presented that contains at least one stage, dressing rooms, storage areas, and other ancillary amenities necessary for the accredited theater production, and:

(1) for a tier-one production, a seating capacity of 700 or more; and

(2) for a tier-two production, a seating capacity of between 200 and 699.

(j) "Sponsor" means a Minnesota organization that:

(1) is in the business of producing live stage presentations;

(2) has its headquarters within 50 miles of the theater where the accredited theater production is performed; and

(3) has nonprofit, tax-exempt status under section 501(c)(3) of the Internal Revenue Code.

(k) "Tier-one production" means a pre-Broadway production or a long-run production performed in a qualified production facility for which aggregate expenditures, including labor, equal at least \$100,000.

(l) "Tier-two production" means a live stage production performed in a qualified production facility for more than six weeks but less than 36 weeks, with at least five performances per week for which aggregate expenditures, including labor, equal at least \$50,000.

**Subd. 3. Application for accredited theater production certificate; certification of credits.** (a) An applicant must apply to the Department of Employment and Economic Development for an accredited theater production certificate for each accredited theater production at each of the applicant's qualified production facilities. The application must be in the form and in a manner approved by the Department of Employment and Economic Development and the commissioner of revenue. The Department of Employment and Economic Development shall issue an accredited theater production certificate to an applicant if it finds that:

(1) the applicant intends to make the expenditures in the state required for certification of the accredited theater production;

(2) the applicant's accredited theater production will benefit the people of the state by increasing opportunities for employment of state residents;

(3) the relationship with the sponsor will utilize the sponsor's resources to the benefit of the accredited theater production; and

4.1 (4) if not for the tax credit award, the applicant's accredited theater production  
4.2 would not occur in the state, which may be demonstrated by any means, including, but not  
4.3 limited to, evidence that:

4.4 (i) the applicant, presenter, owner, or licensee of the production rights has other state  
4.5 or international location options at which to present the production and could reasonably  
4.6 and efficiently locate outside of the state;

4.7 (ii) at least one other state or nation could be considered for the production;

4.8 (iii) the receipt of the tax award credit is a major factor in the decision of the  
4.9 applicant, presenter, production owner, or licensee as to where the production will be  
4.10 presented and that without the tax credit award the applicant likely would not create or  
4.11 retain jobs in the state; or receipt of the tax credit award is essential to the applicant's  
4.12 decision to create or retain new jobs in the state; and

4.13 (iv) the tax credit award will result in an overall positive impact to the state, as  
4.14 determined by the department using the best available data.

4.15 (b) The commissioner shall act expeditiously regarding approval of applications for  
4.16 accredited theater production certificates so as to accommodate the preproduction work,  
4.17 booking, commencement of ticket sales, determination of performance dates, load in, and  
4.18 other matters relating to the live theater productions for which approval is sought.

4.19 (c) Upon satisfactory review of each application, the Department of Employment  
4.20 and Economic Development shall issue a tax credit award certificate stating the amount  
4.21 of the applicant's tax credit award for the taxable year. By January 31 of each year, the  
4.22 Department of Employment and Economic Development must report to the commissioner  
4.23 of revenue the number, amount, and taxpayers to whom tax credit award certificates  
4.24 were issued during the preceding taxable year, and must provide verification that the  
4.25 applicants issued accredited theater production certificates made the full amount of labor  
4.26 expenditures and production expenditures for which the certificates were issued.

4.27 (d) The amount of tax credits awarded to all applicants under this section shall not  
4.28 exceed \$2,000,000 in any calendar year. Applications shall be considered in the order  
4.29 received.

4.30 Subd. 4. **Carryover.** The credit is limited to the liability for tax as computed under  
4.31 this chapter for the taxable year. If the amount of the credit determined under this section  
4.32 for any taxable year exceeds this limitation, the excess is a live theater production credit  
4.33 carryover to each of the five succeeding taxable years. The entire amount of the unused  
4.34 credit for the first taxable year is carried first to the earliest of the taxable years to which the  
4.35 credit may be carried and then to each successive year to which the credit may be carried.

The amount of the unused credit which may be added under this subdivision shall not exceed the taxpayer's liability for tax, less the credit under this section for the taxable year.

**Subd. 5. Transfers.** After 180 days from the date of an applicant's first labor expenditure or production expenditure, the applicant may sell, assign, or otherwise transfer all or part of the value of the credits to another taxpayer subject to tax under this chapter and must notify the commissioner of revenue within 30 days of the transfer on a form prescribed by the commissioner. An applicant may not transfer a credit more than once in a 12-month period.

**Subd. 6. Live theater tax credit award program required agreement; evaluation and reports.** (a) The commissioner shall require a recipient of a live theater production tax credit award certificate to enter into a written agreement with the sponsor affiliated with the accredited theater production concerning the terms of their relationship for purposes of the live theater production.

(b) By March 30 of each calendar year, the Department of Employment and Economic Development shall submit to the chairs and ranking minority members of the senate and house of representatives committees having jurisdiction over jobs, economic growth, and taxes, a report that includes:

(1) an assessment of the effectiveness of the program in creating and retaining live theater production jobs in the state and whether the job positions are entry level, management, vendor, or production related;

(2) the amount of accredited theater production spending brought to the state, including the amount of spending and type of Minnesota vendors hired in connection with an accredited theater production;

(3) demographic information on the recipients of qualifying Minnesota labor expenditure salaries or wages, including geographical, racial and ethnic, gender, and income level information; and

(4) the identification of each vendor that provided goods or services included in an accredited theater production's Minnesota production spending.

(c) \$..... is appropriated annually from the general fund to the Department of Employment and Economic Development for the evaluation and reporting required under this subdivision.

**EFFECTIVE DATE.** This section is effective for taxable years beginning after December 31, 2011.