HB 23-1309

Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Final Fiscal Note

Drafting Number:	LLS 23-1027	**Date:**	July 18, 2023
Prime Sponsors:	Rep. Herod; Snyder Sen. Jaquez Lewis	**Bill Status:**	Signed into Law
		Fiscal Analyst:	Louis Pino | 303-866-3556 louis.pino@coleg.gov

Bill Topic: **FILM INCENTIVE TAX CREDIT**

Summary of Fiscal Impact:

☒ State Revenue
☒ State Expenditure
☐ State Transfer
☒ TABOR Refund
☐ Local Government
☐ Statutory Public Entity

The bill makes the current performance-based incentive for film production in Colorado unavailable in 2024. It instead creates a state income tax credit for a film production company that employs a workforce for in-state production activity for income tax year 2024 only. Conditional on the state TABOR outlook, the bill on net decreases state expenditures and state revenue through FY 2024-25.

Appropriation Summary: For FY 2023-24, the bill requires an a net appropriation reduction of $282,417 to the Office of Economic Development and International Trade (OEDIT).

Fiscal Note Status: This revised fiscal note reflects the enacted bill.

Table 1
State Fiscal Impacts Under HB 23-1309

		Budget Year FY 2023-24	Out Year FY 2024-25
Revenue	General Fund	($2.5 million)	($2.5 million)
	Total Expenditures	**($2.5 million)**	**($2.5 million)**
Expenditures	General Fund	-	$115,399
	Cash Funds	($282,417)	($400,000)
	Centrally Appropriated	$22,675	$10,167
	Total Expenditures	**($259,742)**	**($274,434)**
	Total FTE	**1.3 FTE**	**0.6 FTE**
Transfers		-	-
Other Budget	TABOR Refund	($2.5 million)	($2.5 million)
	General Fund Reserve	-	$17,310

Summary of Legislation

The bill makes the current performance-based incentive rebate program for eligible film, television and production-related expenses unavailable for calendar year 2024, and specifies that a taxpayer may not claim both the rebate and the tax credit created in the bill.

For income tax year 2024 only, the bill creates a state income tax credit for a film production company that employs a workforce for in-state production activity made up of at least 50 percent Colorado residents. The credit is equal to:

- 20 percent of the total amount of the production company's qualified local expenditures if the total is at least $100,000, for a production company that originates production activities in Colorado;

- 20 percent of the total amount of the production company's qualified local expenditures if the total is at least $250,000, for a production company that produces a television commercial or video game and does not originate production activities in Colorado but employs a workforce made up of at least 50 percent Colorado residents for any in-state production activity; and

- 22 percent of the total amount of the production company's qualified local expenditures that Office of Economic Development and International Trade (OEDIT) determines that the production company filmed in a rural community or marginalized urban center, in addition to meeting the other criteria in the bill.

The availability of the credit is conditional on the state TABOR situation. If the state revenue subject to TABOR exceeds the Referendum C cap by at least $50 million in FY 2023-24, OEDIT may issue income tax credits to qualified taxpayers up to $5 million. If revenue subject to TABOR does not exceed the Referendum C cap in FY 2023-24, or exceeds the cap by less than $50 million, the availability of the credit is determined by the General Assembly

Finally, the bill requires the Colorado Office and Film, Television and Media to provide a report on the effectiveness of the credit to House of Representatives Finance Committee and Senate Finance Committee by February 4, 2025.

Assumptions

Based on the March 2023 Legislative Council Staff economic and revenue forecast, state revenue subject to TABOR is expected to exceed the Referendum C cap by more than $50 million in both FY 2023-24 and FY 2024-25. The fiscal note assumes the credit will be available for tax year 2024 and the full $5 million amount allowed will be certified by OEDIT.

State Revenue

Conditional upon the TABOR outlook, the bill is expected to reduce General Fund revenue by $2.5 million in FY 2023-24 (half-year impact), and by $2.5 million in FY 2024-25 (half-year impact). The bill reduces individual and corporate income tax revenue, which is subject to TABOR.

State Expenditures

Conditional upon the TABOR outlook, the bill decreases state expenditures, on net, by $259,742 in FY 2023-24, $274,434 in FY 2024-25 and by similar amounts in later years. The net reduction includes a decrease in costs in OEDIT, paid from the Office of Film, Media, and TV Cash Fund, on an ongoing basis, and an increase in expenditures in the Department of Revenue, paid from the General Fund. Expenditures are shown in Table 2 and detailed below.

Table 2
Expenditures Under HB 23-1309

	FY 2023-24	FY 2024-25
Department of Revenue (DOR)		
Personal Services	-	$37,970
GenTax Programming and Testing	-	$68,110
Data Reporting	-	$7,392
Document Management and Tax Form Changes	-	$1,927
Centrally Appropriated Costs[1]	-	$10,167
FTE – Personal Services	-	0.6 FTE
DOR Subtotal	**-**	**$125,566**
Office of Economic Development and International Trade		
Personal Services	$89,158	-
Operating Expenses	$1,755	-
Capital Outlay Costs	$6,670	-
Salesforce Software License	$20,000	-
Incentive Rebates	($400,000)	($400,000)
Centrally Appropriated Costs[1]	$22,675	-
FTE – Personal Services	1.3 FTE	-
OEDIT Subtotal	**($259,742)**	**($400,000)**
Total	**($259,742)**	**($274,434)**
Total FTE	**1.3 FTE**	**0.6 FTE**

[1] *Centrally appropriated costs are not included in the bill's appropriation*

Office of Economic Development and Trade (OEDIT). For FY 2023-24 only, expenditures increase in OEDIT to administer the income tax credit and decrease for the office to no longer provide incentive rebates.

- **Personal services.** The fiscal note assumes that the current staffing levels (4.5 FTE) will continue with the change from an incentive program to a tax credit program. In addition, OEDIT will require 1.3 FTE in FY 2023-24 only. Of this, 0.3 FTE is one time cost for a staff administrator. The remaining 1.0 FTE is for a program manager to administer the program and verify the taxpayer meets the requirements in the bill.

- **Salesforce License.** OEDIT utilizes the management software Salesforce for interaction with customers, customer relationship, analytics, and application development. It is estimated a one cost for the license in FY 2023-24 is approximately $20,000.

- **Incentive rebates**. The fiscal note assumes that of the current $1.2 million appropriation for the incentive program, approximately $800,000 is used for rebates. Under the bill, these incentives will no longer be awarded and businesses will instead receive the tax credit. As a result, the bill is estimated to reduce state expenditures for incentives by $400,000 in FY 2023-24 (half-year impact) and by $400,000 in subsequent years.

Department of Revenue. For FY 2024-25, expenditures will increase in DOR to administer the income tax credit and income tax addition in the bill.

- **Staffing.** Based on the number of tax credits that are expected, DOR requires 0.6 FTE for FY 2024-25 only.

- **Computer programming and testing.** For FY 2024-25 only, the bill will require changes to DOR's GenTax software system and additional testing. Changes are programmed by a contractor at a cost of $231.75 per hour. Approximately 200 hours of computer programming will be required to implement this bill, totaling $46,350. Additional computer and user acceptance testing are required to ensure programming changes are tested and functioning properly, resulting in an additional $59,730 in expenditures by the department. A portion of this amount is included on the personal services line in Table 2.

- **Data reporting.** For FY 2024-25 only, the Office of Research and Analysis (ORA) within DOR will have costs of $7,392 to collect and report data on the new tax credit.

- **Document management and tax form changes.** In FY 2024-25, the bill requires changes to tax forms and computer testing for paper filings at a cost of $1,972. Expenditure for form changes occur in the Department of Personnel and Administration using reappropriated funds.

Centrally appropriated costs. Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. These costs, which include employee insurance and supplemental employee retirement payments, are shown in Table 2.

Other Budget Impacts

TABOR refunds. The bill is expected to decrease the amount of state revenue required to be refunded to taxpayers by the amounts shown in the State Revenue section above for FY 2023-24 and FY 2024-25. This estimate assumes the March 2023 LCS revenue forecast. A forecast of state revenue subject to TABOR is not available beyond FY 2024-25. Because TABOR refunds are paid from the General Fund, increased General Fund revenue will increase the TABOR refund obligation, but result in no net change to the amount of General Fund otherwise available to spend or save.

General Fund reserve. Under current law, an amount equal to 15 percent of General Fund appropriations must be set aside in the General Fund statutory reserve beginning in FY 2022-23. Based on this fiscal note, the bill is expected to decrease the amount of General Fund held in reserve by the amounts shown in Table 1, which will increase the amount of General Fund available for other purposes.

Effective Date

The bill was signed into law by the Governor on June 5, 2023, and takes effect on August 7, 2023, assuming no referendum petition is filed.

State Appropriations

For FY 2023-24, this bill requires a net appropriation decrease of $282,417 from the Office of Film, TV, and Media Cash Fund to the Office of Economic Development and International Trade, and an additional 1.3 FTE.

State and Local Government Contacts

Information Technology	OEDIT	Personnel
Revenue		