Policy Matters Ohio

Tax policy
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Testimony to the House Finance Committee on House Bill 475: Film tax credit

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Good afternoon, Chairman Smith, Vice Chair Ryan, Ranking Member Driehaus and members of the committee. Thank you for this opportunity to testify today on House Bill 475, which would modify the state's film tax credit.

House Bill 475 would dramatically increase targeted public subsidy for development of the motion picture industry. This targeted industry is outside of the nine strategic industries targeted by JobsOhio, the privately operated economic development entity for the state.

The motion picture industry presently receives a $20 million annual subsidy through a refundable tax credit – a tax expenditure, one of Ohio's 128 "tax breaks" that comprise the $9 billion tax expenditure budget, one of the largest categories of state spending. This tax credit falls into the category of business or economic development tax expenditure, which makes up the lion's share of tax breaks, accounting for 55 percent of that $9 billion tax expenditure budget.

House Bill 475 would boost the tax expenditure for the motion picture industry to $75 million annually, an increase of $55 million a year, and would eliminate the cap on the credits. It would not only greatly enlarge Ohio's program, it would make the tax credits transferable, making the program less efficient and less transparent.

Transferability allows motion picture companies to sell the tax credits, typically on a secondary market, raising equity for a project.

Suppose a movie production company invests $25 million in a production in Ohio and of that, $8 million is eligible for a film tax credit. The movie producer's tax liability may be quite small, but the tax credit is refundable, so it is a lucrative incentive. Transferability allows this resource to be sold in advance of completion of the production and receipt of the credit. The movie producer ("seller") may sell the benefit as soon as eligibility is approved to raise funding for the project. The buyers – banks, insurance companies – need no connection to the motion picture industry. But they have Ohio tax liability, and they buy the credits to reduce their Ohio taxes.

In 2008, then tax commissioner Rich Levin testified on transferable tax credits proposed under House Bill 196 of the 127th General Assembly. "The tax credits are being used to offset tax liabilities in Ohio that … have nothing to do with film production, the industry this proposal seeks the incentivize," he said.[1] The same situation applies to House Bill 475.

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[1] Testimony of Tax Commissioner Rich Levin on House Bill 196 to the House Ways and Means Committee, November 19, 2008.

House Bill 475 is proposed “For the purpose of encouraging and developing a strong film industry in this state,” but the financial mechanism proposed in House Bill 475, the transferable tax credit, permits the subsidy to support various unintended entities. Buyers typically pay less than a dollar for each dollar of tax credit[2] because of risk, a loss of subsidy value to the seller. Risks may include lack of information on the project and the tax credit marketplace itself: this creates the need for the secondary market with experienced brokers. Buyers face the risk that the seller may be unable to comply with the state agreement, causing the state to rescind the tax credit. Changes in state policy or legislation may modify the value of the tax credit. Insurers such as Lloyds of London may provide insurance coverage for these risks, but at a cost.[3] Brokers' commissions and attorney fees also reduce the value of the subsidy to its intended target. All of these costs represent a “leakage” of taxpayer dollars intended to subsidize the motion picture industry.

Tax credit transfers have become sophisticated financial transactions, turning what should be a transparent state economic development strategy using taxpayer dollars into obscure financial systems. The sale of the tax credit allows the buyers – the unintended beneficiaries of the subsidy – to escape scrutiny or accountability. In vetoing House Bill 196 in 2009, Governor Strickland wrote: “A transferable credit may change hands many times, making accurate tax administration cumbersome and expensive. It is also an inefficient way to subsidize an industry, as much of the credit will be realized by those who are not involved in the film industry….”[4]

If Ohio desires to spend $150 million in each two-year budget to stimulate a new motion picture industry, it would be far better to debate the merits of creating a new grant program side by side with the need for adequate funding of schools, ensuring clean water, protecting vulnerable children and seniors, and restoring funding to local communities.

There are many needs in this state. Fostering new financial services for unknown investors to avoid state tax liability so as to help some private movie production firms raise equity is a purpose that pales in comparison to the need for basic public services in Ohio communities.

Thank you for this opportunity to testify. I would be glad to answer questions.

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[2] “For the buyers to benefit from the transaction, the tax credits have to be sold for less than their full value. Prices vary, but brokers say that it's typical for sellers to get 85 or 90 cents on the dollar.” Josh Goodman, “Tax Breaks for Sale: Transferable film tax credits explained,” Pew Charitable trust, December 14, 2012. http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2012/12/14/tax-breaks-for-sale-transferable-tax-credits-explained

[3] Matthew Savare, “Beyond the Basics: The Inside Scoop on Production Credits,” Filmmaker, Fall, 2009 at https://www.lowenstein.com/files/Publication/a071b8e4-744a-4d1f-9105-5a728751d845/Presentation/PublicationAttachment/90e89814-6197-4580-aca8-5cff2e2b6f94/Beyond%20The%20Basics%20MS%2010.09.pdf

[4] Gongwer news service, “Vetoed Bill, January 6, 2009).