

108TH CONGRESS  
1ST SESSION

# S. 1613

To amend the Internal Revenue Code of 1986 to allow a United States independent film and television production wage credit.

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## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 11, 2003

Mrs. LINCOLN (for herself, Ms. SNOWE, Mr. REID, Mr. SMITH, Mr. BREAUX, Mr. ENSIGN, Mr. DURBIN, Mr. COCHRAN, Mr. LEAHY, Ms. COLLINS, Mr. GRAHAM of South Carolina, Mr. DASCHLE, Mrs. BOXER, Mr. KENNEDY, Mr. KERRY, Mrs. FEINSTEIN, Mr. BINGAMAN, Ms. LANDRIEU, and Mr. SCHUMER) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to allow a United States independent film and television production wage credit.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “United States Inde-  
5 pendent Film and Television Production Incentive Act of  
6 2003”.

1 **SEC. 2. TAX INCENTIVES FOR QUALIFIED UNITED STATES**  
2 **INDEPENDENT FILM AND TELEVISION PRO-**  
3 **DUCTION.**

4 (a) **IN GENERAL.**—Subpart D of part IV of sub-  
5 chapter A of chapter 1 of the Internal Revenue Code of  
6 1986 (relating to business related credits) is amended by  
7 adding at the end the following new section:

8 **“SEC. 45G. UNITED STATES INDEPENDENT FILM AND TELE-**  
9 **VISION PRODUCTION WAGE CREDIT.**

10 “(a) **AMOUNT OF CREDIT.**—For purposes of section  
11 38, the United States independent film and television pro-  
12 duction wage credit determined under this section with re-  
13 spect to any eligible taxpayer for any taxable year is an  
14 amount equal to 25 percent of the qualified wages paid  
15 or incurred per qualified United States independent film  
16 and television production during such taxable year.

17 “(b) **ONLY FIRST \$25,000 OF WAGES PER PRODUC-**  
18 **TION TAKEN INTO ACCOUNT.**—With respect to each quali-  
19 fied United States independent film and television produc-  
20 tion, the amount of qualified wages paid or incurred to  
21 each qualified employee or personal service corporation  
22 which may be taken into account per such production shall  
23 not exceed \$25,000.

24 “(c) **ELIGIBLE TAXPAYER.**—For purposes of this sec-  
25 tion, the term ‘eligible taxpayer’ means any taxpayer sub-  
26 stantially all of the total gross income of which for the

1 taxable year is derived from the active conduct of qualified  
2 United States independent film and television productions.

3 “(d) QUALIFIED WAGES.—For purposes of this sec-  
4 tion—

5 “(1) IN GENERAL.—The term ‘qualified wages’  
6 means—

7 “(A) any wages paid or incurred by an em-  
8 ployer for services performed in the United  
9 States by an employee while such employee is a  
10 qualified employee,

11 “(B) the employee fringe benefit expenses  
12 of the employer allocable to such services per-  
13 formed by such employee,

14 “(C) any payments made to personal serv-  
15 ice corporations as defined in section  
16 269A(b)(1) for services performed in the United  
17 States, and

18 “(D) remuneration, other than wages, for  
19 services personally rendered in the United  
20 States.

21 “(2) QUALIFIED EMPLOYEE.—

22 “(A) IN GENERAL.—The term ‘qualified  
23 employee’ means, with respect to any period,  
24 any individual who renders personal services if  
25 substantially all of such services are performed

1 during such period in an activity related to any  
2 qualified United States independent film and  
3 television production.

4 “(B) CERTAIN INDIVIDUALS NOT ELIGI-  
5 BLE.—Such term shall not include—

6 “(i) any individual described in sub-  
7 paragraph (A), (B), or (C) of section  
8 51(i)(1), and

9 “(ii) any 5-percent owner (as defined  
10 in section 416(i)(1)(B)).

11 “(3) COORDINATION WITH OTHER WAGE CRED-  
12 ITS.—No credit shall be allowed under any other  
13 provision of this chapter for wages paid to any em-  
14 ployee during any taxable year if the employer is al-  
15 lowed a credit under this section for any of such  
16 wages.

17 “(4) WAGES.—The term ‘wages’ has the same  
18 meaning as when used in section 51.

19 “(5) EMPLOYEE FRINGE BENEFIT EXPENSES.—  
20 The term ‘employee fringe benefit expenses’ means  
21 the amount allowable as a deduction under this  
22 chapter to the employer for any taxable year with re-  
23 spect to—

24 “(A) employer contributions under stock  
25 bonus, pension, profit-sharing, or annuity plan,

1           “(B) employer-provided coverage under  
2 any accident or health plan for employees, and

3           “(C) the cost of life or disability insurance  
4 provided to employees.

5 Any amount treated as wages under paragraph  
6 (1)(A) shall not be taken into account under this  
7 subparagraph.

8           “(e) QUALIFIED UNITED STATES INDEPENDENT  
9 FILM AND TELEVISION PRODUCTION.—For purposes of  
10 this section—

11           “(1) IN GENERAL.—The term ‘qualified United  
12 States independent film and television production’  
13 means any production described in paragraph (2)  
14 if—

15           “(A) 75 percent of the total wages of the  
16 production are qualified wages,

17           “(B) the production is created primarily  
18 for use as public entertainment or for edu-  
19 cational purposes, and

20           “(C) the total cost of the production which  
21 is taken into account for purposes of deprecia-  
22 tion under section 167(g) is more than  
23 \$200,000 but less than \$7,500,000.

24           “(2) PRODUCTION.—

1           “(A) IN GENERAL.—A production is de-  
2           scribed in this paragraph if such production  
3           is—

4                   “(i) any motion picture (whether re-  
5                   leased theatrically, for television or cable  
6                   programming, or directly to video cassette  
7                   or disc or any other format),

8                   “(ii) any television or cable—

9                           “(I) mini series,

10                           “(II) season of an episodic tele-  
11                   vision series,

12                           “(III) movie of the week, or

13                           “(IV) single program not de-  
14                   scribed in any preceding subclause, or

15                   “(iii) any pilot production for any of  
16                   the productions described in clause (i) or  
17                   (ii).

18           “(B) EXCEPTION.—A production is not de-  
19           scribed in this paragraph if records are required  
20           under section 2257 of title 18, United States  
21           Code, to be maintained with respect to any per-  
22           former in such production (reporting of books,  
23           films, etc. with sexually explicit conduct).

24           “(3) PUBLIC ENTERTAINMENT.—The term  
25           ‘public entertainment’ includes a motion picture

1 film, video tape, or television program intended for  
2 initial broadcast via the public broadcast spectrum  
3 or delivered via cable distribution, or productions  
4 that are submitted to a national organization in ex-  
5 istence on July 27, 2001, that rates films for violent  
6 or adult content. Such term does not include any  
7 film or tape the market for which is primarily top-  
8 ical, is otherwise essentially transitory in nature, or  
9 is produced for private noncommercial use.

10 “(f) CONTROLLED GROUPS.—For purposes of this  
11 section—

12 “(1) all employers treated as a single employer  
13 under subsection (a) or (b) of section 52 shall be  
14 treated as a single employer for purposes of this  
15 subpart, and

16 “(2) the credit (if any) determined under this  
17 section with respect to each such employer shall be  
18 its proportionate share of the wages giving rise to  
19 such credit.

20 “(g) APPLICATION OF CERTAIN OTHER RULES.—  
21 For purposes of this section, rules similar to the rules of  
22 section 51(k) and subsections (c) and (d) of section 52  
23 shall apply.

24 “(h) ELECTION TO HAVE CREDIT NOT APPLY.—

1           “(1) IN GENERAL.—A taxpayer may elect to  
2           have this section not apply for any taxable year.

3           “(2) MANNER OF MAKING ELECTION.—An elec-  
4           tion under paragraph (1) (or revocation thereof)  
5           shall be made in such manner as the Secretary may  
6           by regulations prescribe.”.

7           (b) CREDIT TREATED AS BUSINESS CREDIT.—Sec-  
8           tion 38(b) of the Internal Revenue Code of 1986 (relating  
9           to current year business credit) is amended by striking  
10          “plus” at the end of paragraph (14), by striking the period  
11          at the end of paragraph (15) and inserting “, plus”, and  
12          by adding at the end the following new paragraph:

13                  “(16) the United States independent film and  
14                  television production wage credit determined under  
15                  section 45G(a).”.

16          (c) NO CARRYBACKS.—Subsection (d) of section 39  
17          of the Internal Revenue Code of 1986 (relating to  
18          carryback and carryforward of unused credits) is amended  
19          by adding at the end the following:

20                  “(11) NO CARRYBACK OF SECTION 45G CREDIT  
21                  BEFORE EFFECTIVE DATE.—No portion of the un-  
22                  used business credit for any taxable year which is  
23                  attributable to the United States independent film  
24                  and television production wage credit determined

1 under section 45G may be carried back to a taxable  
2 year ending before January 1, 2004.”.

3 (d) DENIAL OF DOUBLE BENEFIT.—Subsection (a)  
4 of section 280C of the Internal Revenue Code of 1986 (re-  
5 lating to certain expenses for which credits are available)  
6 is amended by inserting “45G(a),” after “45A(a),”.

7 (e) CONFORMING AMENDMENTS.—

8 (1) Section 6501(m) of the Internal Revenue  
9 Code of 1986 is amended by inserting “45G(h),”  
10 after “45C(d)(4),”.

11 (2) The table of sections for subpart D of part  
12 IV of subchapter A of chapter 1 of such Code is  
13 amended by adding at the end the following new  
14 item:

“Sec. 45G. United States independent film and television produc-  
tion wage credit.”.

15 (f) EFFECTIVE DATE.—The amendments made by  
16 this section shall apply to amounts paid or incurred in tax-  
17 able years ending after December 31, 2003.

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