

**First Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 23-0956.01 Alison Killen x4350

HOUSE BILL 23-1275

HOUSE SPONSORSHIP

Lindstedt,

SENATE SPONSORSHIP

Roberts,

House Committees
Finance

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING MODIFICATIONS TO THE PERFORMANCE-BASED**
102 **INCENTIVE FOR FILM PRODUCTION IN COLORADO, AND, IN**
103 **CONNECTION THEREWITH, CLARIFYING THE DEFINITION OF**
104 **"QUALIFIED LOCAL EXPENDITURE" FOR PAYMENTS TO**
105 **PERSONAL SERVICE CORPORATIONS, REQUIRING PRODUCTION**
106 **COMPANIES TO FILE INFORMATION INCOME TAX RETURNS**
107 **REGARDING SUCH PAYMENTS, AND ELIMINATING THE**
108 **WITHHOLDING EXEMPTION FOR PAYMENTS TO NONRESIDENTS**
109 **WHO PERFORM SERVICES IN CONNECTION WITH A FILM**
110 **PRODUCTION FOR LESS THAN ONE HUNDRED TWENTY DAYS IN A**
111 **YEAR.**

Bill Summary

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words or numbers indicate deletions from existing law.

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

Section 1 of the bill modifies the definition of "qualified local expenditure" for purposes of the performance-based incentive for film production in Colorado to include payment by a production company to a personal services corporation to pay the wages or salaries of an employee-owner of the personal service corporation. "Personal service corporation" and "employee-owner of a personal service corporation" have the same meaning as set forth in the internal revenue code. A payment by a production company to a personal service corporation is a qualified local expenditure only if the production company documents the payment in an information income tax return and payments in excess of \$1 million per calendar year per personal service corporation are excluded from the calculation of the performance-based incentive.

Section 2 adds the information income tax return requirement for production companies to state income tax law and specifies that a production company is generally not required to deduct and withhold state income tax from a payment to a personal service corporation for services. However, if the information return fails to provide a taxpayer identification number for the personal service corporation that can be validated through the taxpayer identification number matching program administered by the internal revenue service, or provides a taxpayer identification number issued for a nonresident alien, then such deduction, withholding, and payment of state income tax to the department of revenue is required.

Section 2 also eliminates the withholding exemption for a payment to a nonresident individual who performs services in connection with a film production for less than 120 days in a calendar year.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 24-48.5-114, **amend**
3 (7) introductory portion, (7)(h), and (7)(i); and **add** (4.5) and (7)(j) as
4 follows:

5 **24-48.5-114. Film, television, and media - definitions.** As used
6 in this section and sections 24-48.5-115 and 24-48.5-116, unless the
7 context otherwise requires:

1 (4.5) (a) "PERSONAL SERVICE CORPORATION" HAS THE SAME
2 MEANING AS SET FORTH IN SECTION 269A (b)(1) OF THE INTERNAL
3 REVENUE CODE.

4 (b) "EMPLOYEE-OWNER OF A PERSONAL SERVICE CORPORATION"
5 HAS THE SAME MEANING AS "EMPLOYEE OWNER" AS SET FORTH IN SECTION
6 269A (b)(2) OF THE INTERNAL REVENUE CODE.

7 (7) "Qualified local expenditure" means a payment made by a
8 production company operating in Colorado to a person or business in
9 Colorado in connection with production activities in Colorado. "Qualified
10 local expenditure" ~~shall include, but need not be~~ INCLUDES, BUT IS NOT
11 limited to:

12 (h) Payments for other direct costs incurred by the film production
13 company that are deemed appropriate by the office; ~~and~~

14 (i) Payments of up to one million dollars per employee or
15 contractor, made by a production company to pay the wages or salaries of
16 employees or contractors who participate in the production activities. In
17 order for any wage or salary to be considered a qualified local
18 expenditure, all Colorado income taxes shall be withheld and paid either
19 by the production company or the individual. Any payments in excess of
20 one million dollars per employee or contractor shall be excluded; AND

21 (j) PAYMENTS OF UP TO ONE MILLION DOLLARS PER CALENDAR
22 YEAR PER PERSONAL SERVICE CORPORATION, MADE BY A PRODUCTION
23 COMPANY TO A PERSONAL SERVICE CORPORATION TO PAY THE WAGES OR
24 SALARIES OF AN EMPLOYEE-OWNER OF THE PERSONAL SERVICE
25 CORPORATION WHO PARTICIPATE IN THE PRODUCTION ACTIVITIES. IN
26 ORDER FOR ANY WAGE OR SALARY TO BE A CONSIDERED A QUALIFIED
27 LOCAL EXPENDITURE, THE PRODUCTION COMPANY MUST FILE AN

1 INFORMATION RETURN PURSUANT TO SECTION 39-22-604 (21) REGARDING
2 THE PAYMENTS MADE TO THE PERSONAL SERVICE CORPORATION. ANY
3 PAYMENTS IN EXCESS OF ONE MILLION DOLLARS PER PERSONAL SERVICE
4 CORPORATION SHALL BE EXCLUDED.

5 **SECTION 2.** In Colorado Revised Statutes, 39-22-604, **amend**
6 (2)(a); and **add** (21) as follows:

7 **39-22-604. Withholding tax - requirement to withhold - tax**
8 **lien - exemption from lien - definitions.** (2) As used in this section,
9 unless the context otherwise requires:

10 (a) "Employee" means and includes every individual who is a
11 resident or domiciled in the state of Colorado performing services for an
12 employer, either within or without or both within and without the state of
13 Colorado, or any individual performing services within the state of
14 Colorado, the performance of which services constitutes, establishes, and
15 determines the relationship between the parties as that of employer and
16 employee, and includes officers of corporations and individuals, including
17 elected officials, performing services for the United States government
18 or any agency or instrumentality thereof or the state of Colorado or any
19 county, city or municipality, or political subdivision thereof. ~~except that~~
20 ~~the term shall not include an individual who is not a resident or domiciled~~
21 ~~in the state of Colorado and who performs services in connection with~~
22 ~~any phase of motion picture or television production or television~~
23 ~~commercials for less than one hundred twenty days during any calendar~~
24 ~~year.~~

25 (21) (a) ANY PRODUCTION COMPANY, AS DEFINED IN SECTION
26 24-48.5-114 (6), THAT MAKES A PAYMENT FOR SERVICES TO ANY
27 PERSONAL SERVICE CORPORATION, AS DEFINED IN SECTION 24-48.5-114

1 (4.5)(a), MUST FILE AN INFORMATION RETURN IN A FORM PRESCRIBED BY
2 THE DEPARTMENT OF REVENUE.

3 (b) NO AMOUNT IS REQUIRED TO BE DEDUCTED AND WITHHELD
4 FROM A PAYMENT FOR SERVICES TO A PERSONAL SERVICE CORPORATION
5 OR AN EMPLOYEE-OWNER OF A PERSONAL SERVICE CORPORATION FOR
6 INCOME TAX DUE TO THE STATE IF THE PRODUCTION COMPANY'S
7 INFORMATION RETURN, REQUIRED BY SUBSECTION (21)(a) OF THIS
8 SECTION, ALLOWS TAXPAYER IDENTIFICATION NUMBER VERIFICATION
9 THROUGH THE TAXPAYER IDENTIFICATION NUMBER MATCHING PROGRAM
10 ADMINISTERED BY THE INTERNAL REVENUE SERVICE FOR THE PERSONAL
11 SERVICE CORPORATION. A PRODUCTION COMPANY SHALL DEDUCT AND
12 WITHHOLD STATE INCOME TAX AT THE RATE SET FORTH IN SECTION
13 39-22-104 OR 39-22-301 IF THE PERSONAL SERVICE CORPORATION THAT
14 PERFORMED THE SERVICES:

15 (I) FAILS TO PROVIDE A VALIDATED TAXPAYER IDENTIFICATION
16 NUMBER; OR

17 (II) PROVIDES AN INTERNAL REVENUE SERVICE-ISSUED TAXPAYER
18 IDENTIFICATION NUMBER ISSUED FOR NONRESIDENT ALIENS.

19 (c) FOR PURPOSES OF ALL OTHER PROVISIONS OF THIS SECTION,
20 EXCLUDING SUBSECTION (3)(a) OF THIS SECTION, A PRODUCTION COMPANY
21 THAT DEDUCTS OR WITHHOLDS STATE INCOME TAX FROM A PERSONAL
22 SERVICES CORPORATION THAT PERFORMS SERVICES PURSUANT TO THIS
23 SUBSECTION (21) SHALL BE TREATED AS AN EMPLOYER WITHHOLDING AND
24 DEDUCTING WAGES FROM AN EMPLOYEE, AND SUCH OTHER PROVISIONS OF
25 THIS SECTION SHALL APPLY ACCORDINGLY. THIS SUBSECTION (21)(c)
26 SHALL NOT BE CONSTRUED TO MAKE THE PERSONAL SERVICES
27 CORPORATION THAT PERFORMED THE SERVICES AN EMPLOYEE OF THE

1 PRODUCTION COMPANY THAT DEDUCTS AND WITHHOLDS STATE INCOME
2 TAX FOR ANY OTHER PURPOSE IN LAW.

3 (d) THE EXECUTIVE DIRECTOR MAY PROMULGATE RULES AS
4 NECESSARY REGARDING THE INFORMATION RETURN REQUIRED BY
5 SUBSECTION (21)(a) OF THIS SECTION AND TO AUTHORIZE ANY AMOUNTS
6 DEDUCTED AND WITHHELD PURSUANT TO SUBSECTION (21)(b) OF THIS
7 SECTION TO BE PAID TO THE DEPARTMENT OF REVENUE AS PART OF THE
8 STATE INCOME TAX RETURN.

9 (e) FOR PURPOSES OF THIS SUBSECTION (21), "VALIDATED
10 TAXPAYER IDENTIFICATION NUMBER" HAS THE SAME MEANING AS SET
11 FORTH IN SUBSECTION (18)(f) OF THIS SECTION.

12 **SECTION 3. Act subject to petition - effective date -**
13 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
14 the expiration of the ninety-day period after final adjournment of the
15 general assembly; except that, if a referendum petition is filed pursuant
16 to section 1 (3) of article V of the state constitution against this act or an
17 item, section, or part of this act within such period, then the act, item,
18 section, or part will not take effect unless approved by the people at the
19 general election to be held in November 2024 and, in such case, will take
20 effect on the date of the official declaration of the vote thereon by the
21 governor.

22 (2) The changes related to the definition of employee and
23 withholding requirements made in section (2) of this act apply to income
24 tax years commencing on or after January 1, 2024.