



AUGUST 26, 2020

TO: THE ONTARIO STANDING COMMITTEE ON FINANCE AND ECONOMIC AFFAIRS (THE “COMMITTEE”)

FROM: MICHAEL MURRAY, EXECUTIVE DIRECTOR, TORONTO MUSICIANS’ ASSOCIATION, LOCAL 149, AFM (THE “TMA”)

SUBJECT: STUDY OF THE RECOMMENDATIONS RELATING TO THE ECONOMIC AND FISCAL UPDATE ACT, 2020 AND THE IMPACTS OF THE COVID-19 CRISIS ON CERTAIN SECTORS OF THE ECONOMY

DETAILS ON RECOMMENDATION FOR A NEW LIVE ARTS LABOUR TAX CREDIT AND A NEW LIVE ARTS LABOUR REBATE (THE “LIVE ARTS TAX CREDIT AND REBATE”)

EXECUTIVE SUMMARY

This memo is to follow up on the Committee’s request for more information on the Live Arts Tax Credit and Rebate following TMA’s presentation to the Committee on August 24, 2020.

- Pre-pandemic Provincial support for Live Arts was lagging due to the absence of a Tax Credit for live arts.
- Of the big four cultural industries, the Live Arts will be the hardest hit by the Pandemic.
- Live Arts Tax Credits have been introduced in competing jurisdictions
- A Live Arts Tax Credit and Rebate would start small and grow with recovery, create Ontario jobs, not require artistic assessment, and would be more affordable to implement than increased grants or emergency funds
- There are risks considering the slow turnaround of tax credit applications, and the financing required to accommodate this time lag. Those risks can be mitigated by the Province working with financial institutions to guarantee financing for live productions.
- **The recommendation: Create a Live Arts Tax Credit and Rebate with projected expenditure of \$19.33 million in 2021.**

PRE-PANDEMIC ONTARIO LIVE ARTS SUPPORT LAGGED GDP GROWTH COMPARED TO OTHER INDUSTRIES

Provincial support for the Live Arts, including live dance, music, and theatre, of all genres, popular, contemporary and classical, and regardless of not-for-profit or for profit creation, production or presentation, has stagnated compared to support for Film, Television and Interactive Digital Media. The main mechanisms causing this divergence are Cultural Media Tax Credits, and the divergence does not align with many purely economic measures of value.

The Province of Ontario invested \$750 million in Ontario Cultural Media Tax Credits (OCMTC) in 2018 (see Table 1), a 260% growth of OCMTC over ten years compared to 40% growth of the provincial government budget, 60% growth of the Ministry of Heritage, Sport, Tourism & Cultural Industries budget, and 0% growth of the Ontario Arts Council(OAC) budget at \$60 million. Keep in mind only a portion of grants at OAC go to the live performing arts. Other supports for Live Arts, such as the Ontario Music Fund and Celebrate Ontario have also not grown at the same rate. In the case of the Ontario Music Fund, the fund has seen a significant reduction. These other supports are also shared among film & television or other disciplines. In the case of the Ontario Music Fund, the fund is shared with sound recording.



This disparity exists despite Live Arts outpacing Film & Television and Publishing in GDP Growth (see Table 2), Cultural Tourism spending and spending growth (see Table 3), and Cultural Export Growth (see Table 4).

LIVE ARTS WILL BE THE HARDEST HIT CULTURAL INDUSTRY IN THE COVID-19 PANDEMIC

While we look forward to more Ontario and Canada specific data, the Oxford Economics study “[The Projected Economic Impact of Covid-19 on the UK Creative Industries](#)” estimates that Theatre losses will be greater than all other cultural industries in 2020. We believe that due to audience dynamics this disparity will grow in recovery without intervention.

A LIVE ARTS TAX CREDIT AND REBATE ACHIEVES EQUITABLE SUPPORT

The main goal of creating the Live Arts Tax Credit and Rebate is to ensure Live Arts benefits from the Province of Ontario’s preference for creative industries tax credit support versus grant support, and at a time where the live Arts will be disproportionately damaged by a Global Pandemic as compared to other creative industries.

- The **Live Arts Labour Tax Credit** could work much like the existing *Ontario Film and Television Tax Credit*, A 35 per cent refundable tax credit on Ontario labour expenditures for live productions produced by Ontario-based Canadian for-profit corporations.
- The **Live Arts Labour Rebate** could work much the same, but be formed more simply as a rebate for not-for-profit corporations given the absence of a tax filing. A 35 per cent rebate on Ontario labour expenditures for live productions produced by Ontario-based Canadian for-profit corporations.

COMPARATIVE PROGRAMS IN COMPETING JURISDICTIONS

Other jurisdictions have established Live Arts Tax Credits (See Appendix B), the most well-known, and highest used are:

- United Kingdom: [Theatre Tax Relief Program](#)
- New York State: [Empire State Musical and Theatrical Production Tax Credit Program](#)
- Louisiana: [Live Performance Production Program](#)
- Illinois: [Illinois Live Theatre Production Tax Credit Program](#)

The United Kingdom’s Theatre Tax Relief program is most aligned with the proposed Live Arts Tax Credit and Rebate. It will become increasingly difficult to compete for domestic and international live production to be built in Ontario without a competitive incentive program.

KEY ADDITIONAL BENEFITS OF A LIVE ARTS TAX CREDIT AND REBATE

- The Live Arts Tax Credit and Rebate **expenditure will start more modestly and grow as the Province of Ontario’s fiscal state improves**. As opposed to special funds, or a cash influx to existing funds or Agencies, Tax Credits are a % of expenditures, the key expenditure being labour costs. This means that as the live arts sector slowly recovers from the Pandemic, labour costs will rise, and Live Arts Tax Credit and Rebate support will increase in step.
 - The Live Arts Tax Credit and Rebate **requires the creation of Ontario Jobs** versus softer incentives for job creation in current supports. The current set of live arts supports allow for grants to go towards the engagement of international artists, techs and administration .
 - The Live Arts Tax Credit and Rebate is **based on expenditure, not jury/agency artistic assessment**, so they prioritize straightforward economic contribution and Ontario Job creation versus artistic or programmatic excellence. This can be a more straight forward concept for entrepreneurial live arts companies, including live arts companies from Black and Indigenous Communities and Communities of Colour.
 - Tax Credits are **more affordable to manage** and have not increased the size of the bureaucracy to the same extent. For instance, in Ontario in 2018 for every dollar that went towards Ontario’s Creative Industries Tax
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Credits, less than one cent went to administration expenses. For grant supports from Ontario Arts Council, Ontario Creates and Ontario Trillium Foundation for every dollar that went to grants, between 14 and 20 cents went to administration. While some of this disparity exists from economies of scale given the size of the investment in Ontario's Creative Industries Tax Credits, even if the investment was closer to those in the granting agencies, and the dollar cost of administration remained exactly the same, tax credits would still only cost between 10 and 12 cents per dollar invested.

KEY RISKS OF A LIVE ARTS TAX CREDIT AND REBATE

- Tax Credits are **slow to process and payout, creating cash flow issues** where producers must pay for labour first and receive support much later. Tax credit turnaround time was identified as an area for improvement in the 2019 Ontario Budget.
- Because of this delay, **producers funded through tax credits must utilize production financing**, and while a mature production financing industry has grown around the screen based industries, it is unclear whether this same section of financiers would be interested in live production, especially at the advent of a new tax credit and rebate. There is the additional risk of the readiness of live producers to access debt financing where they have not regularly accessed debt financing to produce in the past. This is especially a concern for small and mid-sized producers, including the majority of live producers from Black and Indigenous Communities and Communities of Colour.
- **These risks can be mitigated** if the Province of Ontario would facilitate the creation of Live Arts financing options at major financial institutions. Further the Province could provide guarantees for that financing until there was a mid to long term period of experience, without a high rate of default, in order to validate the Live Arts Tax Credit and Rebate and provide the risk assurance required for financial institutions to continue financing without the Province's guarantee.

PROJECTED EXPENDITURE

Using current Film & Television GDP and Tax Credits as a base and estimating the contraction and recovery of the Live Arts sector, as well as the potential usage rate of the Live Arts Tax Credit and Rebate as compared to the Film & Television Tax Credits, we have assembled a projected expenditure for the Live Arts Tax Credit and Rebate over five years (See Table 6 and Table 7). We project that expenditure will be \$19.33 million in 2021, and grow to \$64.45 million in 2025.

RECOMMENDATION

We recommend that the Province of Ontario **Create a Live Arts Labour Tax Credit and Live Arts Labour Rebate** so Live Arts can:

1. Recover from the Pandemic in the medium and long term;
 2. Compete with Live Arts sectors in other jurisdictions; and
 3. Receive fair support of the Ontario government when compared to other creative industries.
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APPENDIX A - TABLES

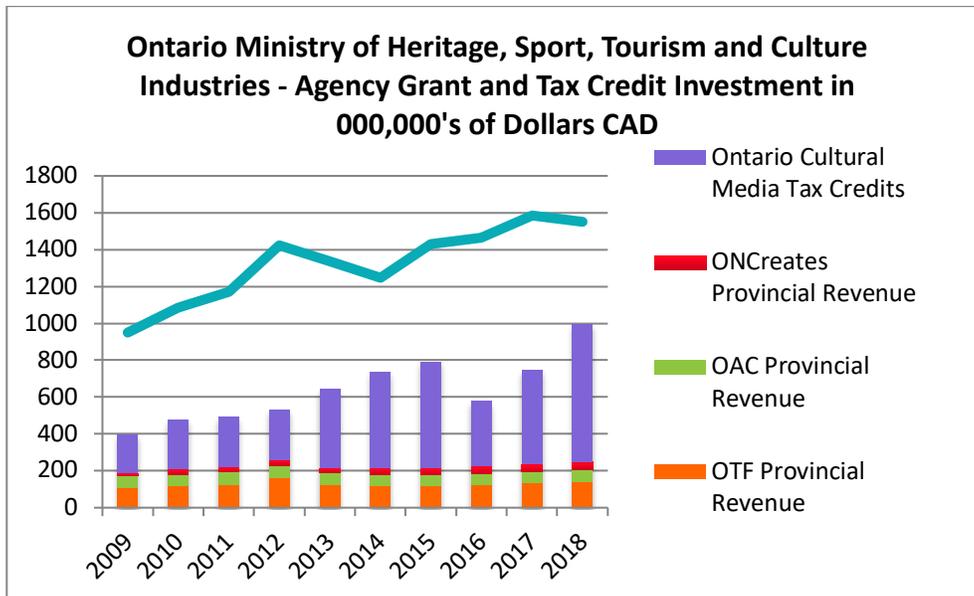


Table 1: Ontario Cultural Investments 2009-2018 (Source: Ontario Budgets, OAC, Ontario Creates and OTF Annual Reports)

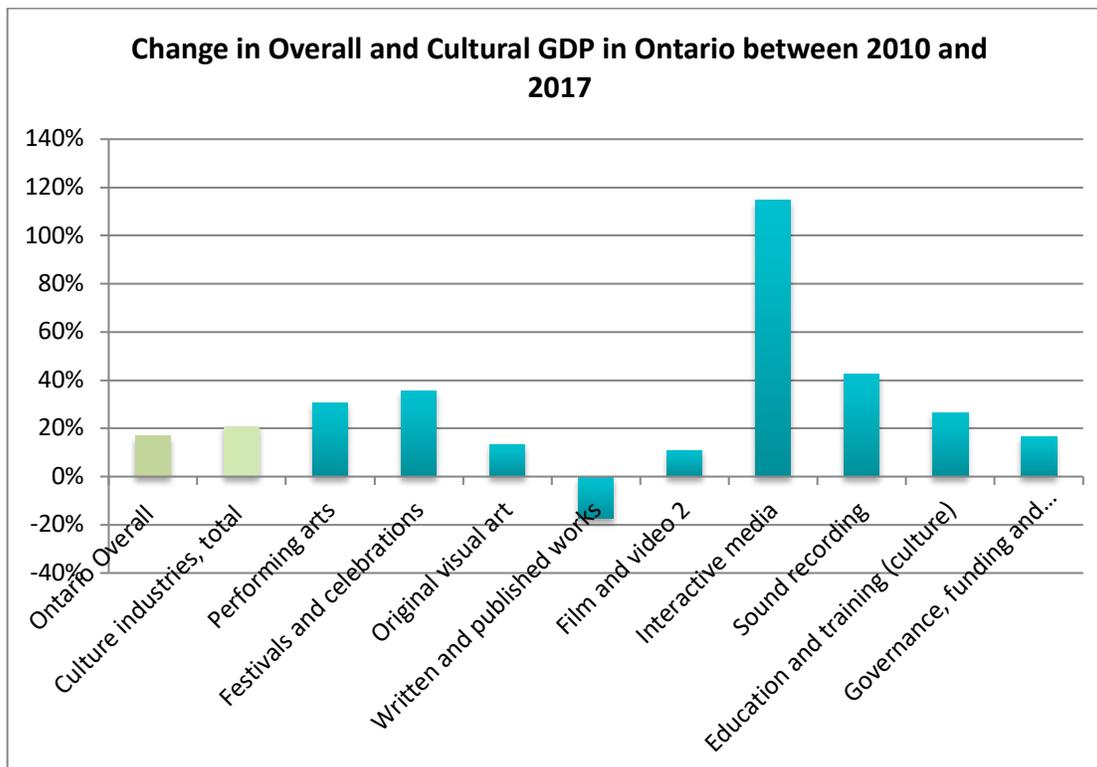


Table 2: GDP Growth between 2010 and 2017 – (Source: Statscan CANSIM 051-0005, 384-0037 and 387-0012 Culture and sport gross domestic product per capita and as a share of the total economy)

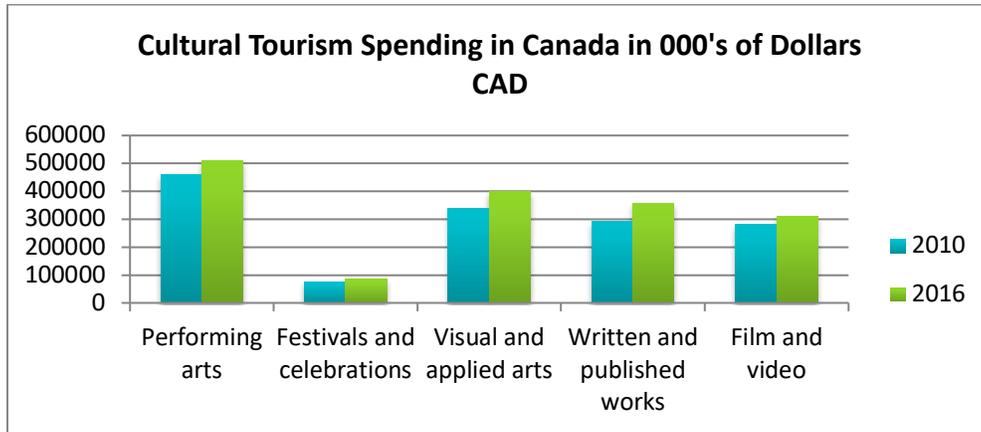


Table 3: Cultural Tourism Spending 2010 compared to 2016 (Source: Statistics Canada, National Tourism Indicators survey #1910 and Culture Satellite Account)

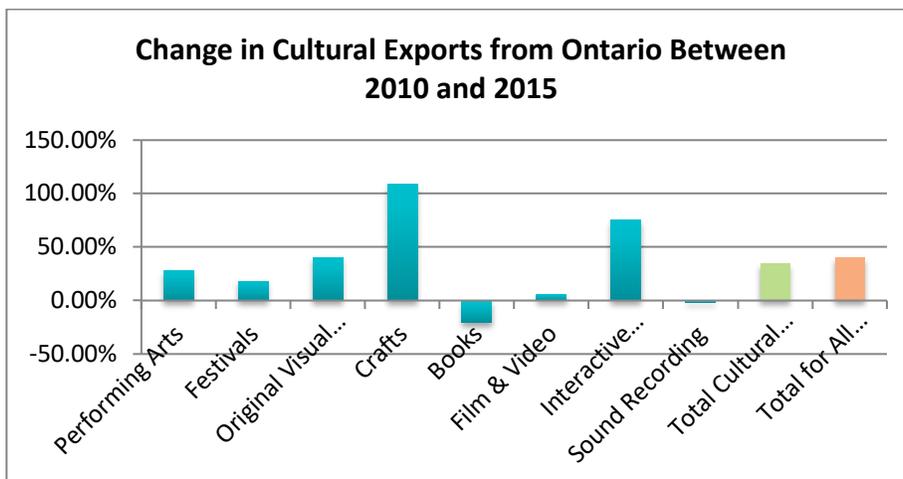


Table 4: Cultural Export Growth between 2010 and 2015 (Source: Statscan CANSIM tables 384-0038, 387-0019 and 387-0020, International trade of culture and sport products, by province and territory)

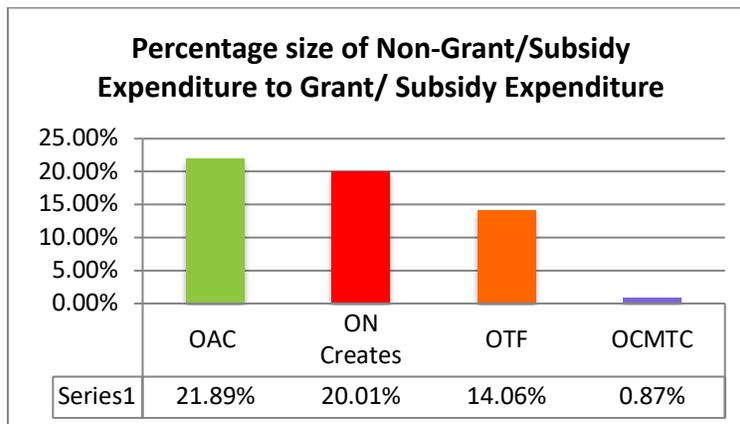


Table 5: 2018 Grant to Non-Grant Expenditure in Ontario Cultural Granting Agencies and Ontario's Creative Industries Tax Credits (Source: Annual Reports OAC, OTF, Ontario Creates)

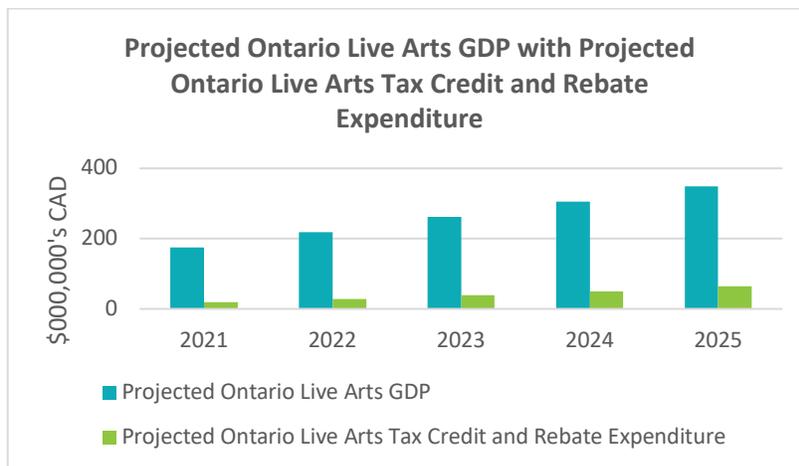


Table 6: Projected Ontario Live Arts GDP, Tax Credit and Rebate 2021-2025 (Source: Ontario Creates Annual Report and Statscan CANSIM 051-0005, 384-0037 and 387-0012 Culture and sport gross domestic product per capita and as a share of the total economy)

Projected Live Arts GDP and Live Arts Tax Credit and Rebate Expenditure using Film & Television as a Base							
	Detail	2018	2021	2022	2023	2024	2025
All \$ figures in \$ 000,000's CAD							
Film & Television							
Film & Television Ontario GDP	A	1,890					
Ontario Film & Television Tax Credit	B	251					
Ontario Production Services Tax Credit	C	414					
Ontario Computer Animation & Special Effects Tax Credit	D	32					
Total Film & Television Tax Credits	E = B + C + D	697					
Film & Television Tax Credits as a % of GDP	F = E / A	36.87%					
Live Arts							
Recovery factor as % of 2018	G (estimate)	100%	20%	25%	30%	35%	40%
Usage factor as % of Film & Television Usage	H (estimate)	n/a	30%	35%	40%	45%	50%
Live Ontario GDP in 2017 (Most recent numbers)	I	874					
Projected Ontario Live Arts GDP	J = I x G		174.8	218.5	262.2	305.9	349.6
Projected Ontario Live Arts Tax Credit and Rebate Expenditure	K = J * F * H		19.33	28.20	38.67	50.75	64.45

Table 7: Projected Live Arts Tax Credit and Rebate Expenditure 2021-2025 Detail (Source: Ontario Creates Annual Report and Statscan CANSIM 051-0005, 384-0037 and 387-0012 Culture and sport gross domestic product per capita and as a share of the total economy)

APPENDIX B – SUMMARY OF EXISTING TAX RELIEF PROGRAMS

UNITED KINGDOM

The Theatre Tax Relief program exists to provide support to the live performing arts industry and to encourage investment.

The credit is available commercial theatre production and not-for-profit theatre companies.

Eligible companies can claim 20-25% of pre-performance costs, which can also include recast costs during operating weeks as well as royalty expenses.

ILLINOIS (Chicago)

Live Theatre Production Tax Credit Act

Effective June 1, 2012

Purpose:

“The Illinois economy depends heavily on the commercial for-profit live theater industry and the pre-Broadway and long-run shows that are presented in Illinois. As a result of intense competition from other prominent theater cities in the United States and abroad in attracting pre-Broadway and long-run shows, Illinois must move aggressively with new business development investment tools so that Illinois is more competitive in site location decision making for show producers.”

Eligibility:

The Act supports for-profit live theatre productions in venues with 1200 or more seats, that are either pre-Broadway or long run productions of more than eight weeks. The production must spend in excess of \$100,000.

Eligible Expenditures:

- Expenditures must take place in the State of Illinois
- Expenditures must exceed \$100,000
- Gross salary and wages, including benefits, for non-talent employees, up to a maximum of \$100,000 per employee
- Marketing, public relations and advertising expenditures
- Construction and purchase of scenic and production elements

Tax Relief:

Eligible productions may receive the following tax relief:

- Up to 20% of Illinois labour for each tax year
 - Up to 20% of Illinois production spending for each tax year
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- Up to 15% of Illinois labour expenditures generated by the employment of Illinois residents in geographic areas of high poverty or high unemployment in each tax year

NEW YORK STATE

The Empire State Musical and Theatrical Production Tax Credit Program

<https://esd.ny.gov/empire-state-music-and-theatrical-production-tax-credit-program>

Purpose:

To provide incentives for qualified production companies to conduct technical rehearsals and other pre-tour activities and perform shows in qualified regional theatres throughout the state of New York.

Eligibility:

Eligible productions must not have been previously performed in any facility subsequent to the completion of the technical period.

Eligible Expenditures:

- Pre-tour production costs for design, construction and operation (sets, costumes, lights, sound, special and visual effects)
- Gross salaries, wages, fees, per diems, and other compensation including related benefits, to a cap of \$200,000/week
- Technical and crew production costs
- Transportation expenditures related directly to the technical period (including production transportation and personnel transportation and hotel)

Tax Relief:

Qualified companies may be eligible to receive fully refundable credit of up to 25% of eligible expenditures. The total tax credit amount is \$4,000,000 in any fiscal year.

LOUISIANA

The Musical and Theatre Production Tax Incentive

<https://louisianaentertainment.gov/live>

Eligibility:

Eligible productions must be pre-Broadway engagements or remounts, tours or resident production remounts, pre-Broadway tryouts, resident or regional productions, or national tours producing their first stop in Louisiana.

Eligible Expenditures:

- Gross salaries directly related to in-state development of productions
- Physical production costs directly related to in-state production
- Artist compensation directly related to performance days in Louisiana
- Creative team compensation related to work performed in Louisiana
- Local and touring crew compensation for work performed in Louisiana
- Hotel and airfare expenditures
- Venue rental and associated fixed costs

Tax Relief:

The tax credits available to eligible productions are refundable or transferable on a one-time basis and are awarded on the following graduated scale:

- 7% for certified Louisiana expenditures between \$100,000 and \$300,000
- 14% for certified Louisiana expenditures between \$300,000 and \$1,000,000
- 18% for certified Louisiana expenditures over \$1,000,000
- Additional 7% tax credit for payroll expenditures for Louisiana residents

The total tax credit amount is \$10,000,000 in any fiscal year, with 50% of the available credits reserved for not-for-profit organizations. There is a per project cap of \$1,000,000.

OHIO

The Ohio Motion Picture Tax Credit legislation was expanded in 2019 to include live theatre production.

Approved projects must have a minimum \$300,000 spend and may receive up to a 30% tax credit on labour and in-state expenditures.

The live theatre portion of the legislation awards tax credits to “long run productions”, which are live stage productions that are scheduled to be performed for more than five weeks, with an average of at least six performances per week.

The total tax credit amount is \$40,000,000, but this also includes the film and television credits.
