

SENATE No. 2879

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

1 by inserting after section _ the following:-

2 "by adding the following section:

3 Section _ . Section 6 of Chapter 62 of the General Laws, as appearing in the 2008 Official
4 Edition, is further amended by adding the following subsection:

5 Section 38DD. There shall be established a pilot program for a live theater tax credit
6 program under which a live theater company doing business with a Massachusetts based theater
7 venue, theater company, theater presenter or producer may be eligible. The credit may be
8 claimed against the taxes due pursuant to this chapter. The credit shall be established to support
9 the expansion of pre-Broadway, National Tour launches of off-Broadway shows and pre off-
10 Broadway live theater and Broadway tour launches and shall assist in the development of long
11 run show development and growth.

12 (a) As used in this section the following words shall, unless the context clearly requires
13 otherwise, have the following meanings:

14 "Commissioner", the commissioner of revenue.

15 “Eligible theater production” means a live stage musical, dance or theatrical production
16 or tour being presented in a qualified production facility, as defined in this chapter that is either:
17 (a) a Pre-Broadway production, or (b) a pre off-Broadway production, or (c) a National Tour
18 Launch.

19 “Eligible theater production certificate” means a certificate issued by the Massachusetts
20 Office of Travel and Tourism certifying that the production is an eligible theater production that
21 meets the guidelines of this chapter.

22 “Advertising and public relations expenditure” means costs incurred within the state by
23 the Eligible theater productions for goods or services related to the marketing, public relations,
24 creation and placement of print, electronic, television, billboards and other forms of advertising
25 to promote the Eligible theater production.

26 “Office” means the Massachusetts Office of Travel and Tourism.

27 "Payroll" means all salaries, wages, fees, and other compensation wages including, but
28 not limited to, taxes, benefits, and any other consideration incurred or paid to talent and non-
29 talent employees of the applicant for services rendered within this state to and on behalf of an
30 eligible theater production. The expenditure shall be incurred or paid by the applicant for
31 services related to any portion of an eligible theater production from its pre-production stages,
32 including, but not limited to, (a) the writing of the script, (b) casting, (c) hiring of service
33 providers, (d) purchases from vendors, (e) marketing, (f) advertising, (g) public relations, (h)
34 load in, (i) rehearsals, (j) performances, (k) other eligible theater production related activities, (l)
35 load out; provided further, said labor expenditure shall be directly attributable to the eligible

36 theater production and shall be limited to the first \$100,000 of wages incurred or paid to each
37 employee of an eligible theater production in each tax year.

38 “Pre-Broadway Production” means a live stage production that, in its original or adaptive
39 version, is performed in a qualified production facility having a presentation scheduled for New
40 York City’s Broadway theater district within (24) months after its Massachusetts presentation.

41 “Pre-Off Broadway Production” means a live stage production that, in its original or
42 adaptive version, is performed in a qualified production facility having a presentation scheduled
43 for New York City’s Off-Broadway s theater district within (24) months after its Massachusetts
44 presentation.

45 “National Tour Launch” means a live stage production that, in its original or adaptive
46 version, is performed in a qualified production facility and opens its National tour in
47 Massachusetts.

48 “Production and Performance Expenditures” means a contemporaneous exchange of cash
49 or cash equivalent for goods or services related to development, production, performance or
50 operating expenditures incurred in this state for a qualified theater production including, but not
51 limited to, expenditures for design, construction and operation, including sets, special and visual
52 effects, costumes, wardrobes, make-up, accessories, costs associated with sound, lighting,
53 staging, payroll, transportation expenditures, advertising and public relations expenditures,
54 facility expenses, rentals, per diems, accommodations and other related costs.

55 “Qualified Production Facility” means a facility located in the State of Massachusetts in
56 which live theatrical productions are, or are intended to be, exclusively presented that contains at

57 least one stage, a seating capacity of one hundred seventy-five (175) or more seats, and dressing
58 rooms, storage areas, and other ancillary amenities necessary for the Eligible theater production.

59 “Massachusetts Office of Travel and Tourism” means the office within the secretariat of
60 economic development that has been established in order to market Massachusetts as a leisure
61 travel destination in order to generate state and local tax revenues, create jobs, and support
62 travel-related businesses.

63 “Transportation expenditures” means expenditures for the packaging, crating, and
64 transportation both to the state for use in a qualified theater production of sets, costumes, or other
65 tangible property constructed or manufactured out of state, and/or from the state after use in a
66 qualified theater production of sets, costumes, or other tangible property constructed or
67 manufactured in this state and the transportation of the cast and crew to and from the state. Such
68 term shall include the packaging, crating, and transporting of property and equipment used for
69 special and visual effects, sound, lighting, and staging, costumes, wardrobes, make-up and
70 related accessories and materials, as well as any other performance or production-related
71 property and equipment.

72 (b) Any person, firm, partnership, corporation, trust, estate or other entity that receives an
73 eligible theater production certificate shall be allowed a tax credit equal to thirty-five percent
74 (35%) of the total in state labor costs and twenty five percent (25%) of the production and
75 performance expenditures and transportation expenditures as well as all out of state labor costs
76 for the eligible theater production and to be computed as provided in this chapter against a tax
77 imposed by this chapter. Said credit shall not exceed five million dollars (\$5,000,000) and shall
78 be limited to certified production cost directly attributable to activities in the state and

79 transportation expenditures defined above. The total production budget shall be a minimum of
80 one hundred thousand dollars (\$100,000).

81 (c) No more than five million dollars (\$5,000,000) in total may be issued for any tax year
82 for musical and theatrical production tax credits pursuant to this chapter.

83 (d) The tax credit shall be allowed against the tax for the taxable period in which the
84 credit is earned and can be carried forward for not more than five (5) succeeding tax years.

85 (e) Credits allowed to a company, which is a subchapter S corporation, partnership, or a
86 limited liability company that is taxed as a partnership, shall be passed through respectively to
87 persons designated as partners, members or owners of such companies on a pro rata basis or
88 pursuant to an executed agreement among such persons designated as subchapter S corporation
89 shareholders, partners, or members documenting an alternate distribution method without regard
90 to their sharing of other tax or economic attributes of such entity.

91 (f) If the company has not claimed the tax credits in whole or part, taxpayers eligible for
92 the tax credits may assign, transfer or convey the tax credits, in whole or in part, by sale or
93 otherwise to any individual or entity and such assignee of the tax credits that have not claimed
94 the tax credits in whole or part may assign, transfer or convey the tax credits, in whole or in part,
95 by sale or otherwise to any individual or entity. The assignee of the tax credits may use acquired
96 credits to offset up to one hundred percent (100%) of the tax liabilities otherwise imposed
97 pursuant to this chapter. The assignee may apply the tax credit against taxes imposed on the
98 assignee for not more than five (5) succeeding tax years. The assignor shall perfect the transfer
99 by notifying the commissioner of revenue, in writing, within thirty (30) calendar days following

100 the effective date of the transfer and shall provide any information as may be required by the
101 commissioner to administer and carry out the provisions of this section.

102 (g) For purposes of this chapter, any assignment or sales proceeds received by the
103 assignor for its assignment or sale of the tax credits allowed pursuant to this section shall be
104 exempt from tax under this title.

105 (h) In the case of a corporation, this credit is only allowed against the tax of a corporation
106 included in a consolidated return that qualifies for the credit and not against the tax of other
107 corporations that may join in the filing of a consolidated tax return, provided, however, that in
108 the case of a corporation that files a consolidated return with one or more other corporations with
109 operations in Massachusetts, the credit will be allowed to be included in a consolidated return
110 with respect to such corporations with operations in Massachusetts only.

111 (i) The applicant or applicants shall properly prepare, sign and submit to the
112 Massachusetts office of travel and tourism an application for initial certification of the theater
113 production. The application shall include such information and data as the office deems
114 reasonably necessary for the proper evaluation and administration of said application, including,
115 but not limited to, any information about the theater production company or their related
116 partners/presenters and a specific Massachusetts live theater or musical production. The office
117 shall review the completed applications and determine whether it meets the requisite criteria and
118 qualifications for the initial certification for the production and/or presentation. If the initial
119 certification is granted, the office shall issue a notice of initial certification of the eligible theater
120 production and/or presentation to the theater production company, co-producer or presenter and
121 to the commissioner. The notice shall state that, after appropriate review, the initial application

122 meets the appropriate criteria for conditional eligibility. The notice of initial certification will
123 provide a unique identification number for the production/presentation and is only a statement of
124 conditional eligibility for the production/presentation and, as such, does not grant or convey any
125 Massachusetts tax benefits.

126 (j) Upon completion of an eligible theater production, the applicant or applicants shall
127 properly prepare, sign and submit to the office an application for final certification of the eligible
128 theater production. The final application shall also contain a cost report and an accountant's
129 certification. The office and commissioner may rely without independent investigation, upon the
130 accountant's certification, in the form of an opinion, confirming the accuracy of the information
131 included in the cost report. Upon review of a duly completed and filed application and upon no
132 later than thirty (30) days of submission thereof, the commissioner will make a determination
133 pertaining to the final certification of the eligible theater production and the resultant tax credits.

134 (k) Upon determination that the company qualifies for final certification and the resultant
135 tax credits, the commissioner shall issue to the company: (1) an eligible theater production
136 certificate; and (2) a tax credit certificate in an amount in accordance with section (b) hereof. A
137 musical and theatrical production company is prohibited from using state funds, state loans or
138 state guaranteed loans to qualify for the live theater tax credit. All documents that are issued by
139 the office pursuant to this section shall reference the identification number that was issued to the
140 production as part of its initial certification.

141 (l) The Massachusetts office of travel and tourism, in consultation as needed with the
142 commissioner of revenue, shall promulgate such rules and regulations as are necessary to carry

143 out the intent and purposes of this chapter in accordance with the general guidelines provided
144 herein for the certification of the production and the resultant production credit.

145 (m) If information comes to the attention of the Massachusetts Office of Travel and
146 Tourism that is materially inconsistent with representations made in an application, the office
147 may deny the requested certification. In the event that tax credits or a portion of tax credits are
148 subject to recapture for ineligible costs and such tax credits have been transferred, assigned
149 and/or allocated, the state will pursue its recapture remedies and rights against the applicant of
150 the theater production tax credits. No redress shall be sought against assignees, sellers,
151 transferees or allocates of such credits.

152 (n) No credits shall be issued on or after January 1, 2024 unless the production has
153 received initial certification under this section prior to January 1, 2024.

154 (o) The secretary of housing and economic development, in conjunction with the
155 commissioner of revenue, shall make a report on the impact of the live theater pilot program and
156 deliver report to the president of the state senate, the senate committee on ways and means, the
157 speaker of the house of representatives, the house committee on ways and means and the joint
158 committee on economic development and emerging technologies by December 31, 2023. The
159 secretary and commissioner shall collaborate with the live theater industry to collect the relevant
160 data for the report. Said report shall include but not be limited to the following information
161 regarding live theater in Massachusetts during the pilot program:

- 162 1.) The number of shows that have come to Massachusetts since passage of this section.
163 2.) The number of live show days since passage of this section.

164 3.) Analysis of the number of shows and live show days after passage of this section as
165 compared to before passage of this section.

166 4.) Total spending by live theater productions on local businesses and vendors including
167 supplies, hotels, car rental, food and beverage, and items related to the live theater production.

168 5.) Total spending on local labor to set-up, support and take down each production
169 including total work hours.

170 6.) The number of ticket orders from outside Massachusetts.

171 7.) The number of ticket orders from outside the United States.

172 8.) The impact on local businesses in proximity to live theaters including hotel room
173 nights and restaurants."