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April 8, 2022

Via Email

The Honorable Aaron M. Michlewitz, Chair
House Committee on Ways and Means
State House, Room 243
Boston, MA 02133
Aaron.M.Michlewitz@mahouse.gov

Re: House 2828: An Act Creating a Pilot Program to Enhance Economic and Community Development Through Live Theatrical Arts

Dear Chair Michlewitz:

I write in opposition to House 2828, a bill that creates a theater tax credit program similar to the state's film tax credit program, but with even fewer safeguards. There is no evidence that the state's return on investment will exceed the costs of the program. Therefore, before adopting a tax credit program I strongly recommend the Legislature propose a study to ensure the tax credit is necessary and beneficial to the state. While I strongly caution against the creation of a new tax credit program, any program must have safeguards to ensure the Commonwealth benefits fully from the program.

As currently proposed, the theater tax credit is not structured to benefit the Massachusetts economy. Specifically, the legislation grants a 35% credit for in-state labor costs, as well as a 25% credit for in-state production expenses, in-state performance expenditures, and out-of-state labor costs. First, the 35% tax credit for in-state costs is higher than every other live theater tax credit program in the country and exceeds the Commonwealth's and other states' film tax credits.

Second, the bill includes out-of-state costs, which do not benefit the Massachusetts economy. For example, a theater company could construct a stage set outside of Massachusetts and then transport it to a local theater. Both of these expenditures – the construction and the transportation – would qualify for the 25% tax credit, but they would not benefit the Massachusetts economy. Writing a script or other pre-production work that takes place out of state would also be eligible for the tax credit. In short, qualified expenditures should only be those that directly benefit Massachusetts businesses or residents.

Moreover, even with a \$5 million limit for theater tax credits, there are no requirements that a certain percentage of expenditures be made in Massachusetts. The film tax credit program

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has these safeguards, and Chapter 24 of the Acts of 2021 increased the thresholds for in-state spending and in-state filming days for companies to qualify for the credit.

Additionally, the language as drafted is flawed. For example, the bill defines “payroll” but uses the term “labor costs” when describing what is eligible for the tax credit. It appears that payroll could be counted twice, once as labor costs and then again as a production and performance expenditure.

Furthermore, all tax credit programs must have strong oversight provisions. Independent oversight is essential to ensure that those applying for a tax credit are truly eligible and that they present verifiable documentation as part of that application. Currently, the bill allows the Department of Revenue (DOR) and the Massachusetts Office of Travel and Tourism to review a company’s eligibility based solely on an accountant’s certification, without an independent audit. An independent public accounting firm licensed in the Commonwealth should audit the expenditures. DOR should establish minimum review criteria, and the public accountant should attest to the accuracy of these expenditures. DOR should qualify public accounting firms for this purpose and maintain a list of qualified firms.

Proponents of this legislation state that the Commonwealth is losing tourism-related revenue because other states, including Rhode Island, are expanding their tax credit programs. To determine whether this is the case, I strongly endorse the bill’s requirement that the Executive Office of Housing and Economic Development and the DOR analyze the impact of a theater tax credit program. To ensure that the tax credit is both necessary and beneficial to Massachusetts, however, the study should be completed before the Legislature considers this bill.

Thank you for your consideration.

Sincerely,



Glenn A. Cunha
Inspector General