



GLENN A. CUNHA
INSPECTOR GENERAL

The Commonwealth of Massachusetts

Office of the Inspector General

JOHN W. McCORMACK
STATE OFFICE BUILDING
ONE ASHBURTON PLACE
ROOM 1311
BOSTON, MA 02108
TEL: (617) 727-9140
FAX: (617) 723-2334

August 11, 2014

His Excellency Deval Patrick, Governor
State House, Room 360
Boston, MA 02133

Dear Governor Patrick:

I am writing to you regarding sections 52 and 65 of House bill 4377, *An Act Promoting Economic Growth Across the Commonwealth*. This language creates a theater tax credit similar to that currently available for films. Any tax credit should have stringent safeguards to prevent misuse and to ensure that the Commonwealth benefits fully from the establishment of the credit. The current language does not contain the necessary safeguards.

Independent oversight is essential to ensure that those applying for a tax credit are truly eligible and are presenting verifiable documentation as part of that application. An independent public accounting firm licensed in the Commonwealth should audit the production and performance expenditures ("expenditures"), the Department of Revenue ("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.

An applicant should submit the tax credit application and documentation of its expenditures under the pains and penalties of perjury. The applicant should be required to retain all records relating to the theater tax credit for at least seven years. Oversight agencies should have access to these records, and any in the possession of DOR, for the purpose of independent verification. All submissions and findings related to theater tax credits should be public documents. Additionally, the Office of Travel and Tourism, in consultation with DOR, should issue an annual report analyzing the economic impact of the tax credit on the Commonwealth.

The tax credit is intended to benefit the Massachusetts economy, but the applicant is not required to purchase goods or services in Massachusetts. Specifically, the current language states that qualified expenditures are those "incurred in the commonwealth." Consequently, an applicant could hire an out-of-state contractor to do work in Massachusetts, or could purchase supplies from another state to be delivered to Massachusetts. These expenditures would qualify for the tax credit, but they would not benefit the Massachusetts economy. Qualified expenditures should only be those that directly benefit Massachusetts businesses or residents.

Further, all salaries, wages, fees and other compensation paid to non-residents should carry a minimum state withholding tax. Any gains associated with the transfer, sale or assignment of the tax credit should be subject to a minimum state withholding tax and should be payable by the applicant who originally received the eligible theater production certificate. No theater production certificate should be issued to an applicant with any outstanding Massachusetts tax obligation.

As Inspector General and a former prosecutor, I have seen instances in which tax credits and similar programs have been abused. For instance, parties using the program overstated costs and included purchases, such as personal vehicles, that did not qualify under the program. Had safeguards similar to those discussed above been in place, the abuses would not have occurred and the Massachusetts taxpayers would have been protected.

I believe that without these oversight provisions there are vulnerabilities with a theater tax credit. Any tax credit program must be accountable to the taxpayers of the Commonwealth. These recommendations will greatly improve this legislation.

Sincerely,

A handwritten signature in cursive script that reads "Glenn A. Cunha" followed by the date "12/1/14".

Glenn A. Cunha
Inspector General